S. Hrg. 98-1185

SHEE ATIKA, INC.

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

AN INQUIRY INTO THE AFFAIRS OF SHEE ATIKA, INC.

NOVEMBER 2 AND 3, 1983

WASHINGTON, DC

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SHEE ATIKA, INC.

NOVEMBER 2, 1983

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:16 p.m., in room 124, Dirksen Senate Office Building, Senator Frank H. Murkowski (acting chairman of the committee) presiding.

Present: Senators Murkowski and Stevens and Representative Young of Alaska.

Staff present: Paul Alexander, staff director; Jerry Reichling, legislative assistant; Gertrude Wilson, secretary; and Elva Arquero, chief clerk.

Senator **MURKOWSKI**. We call the hearing of the Select Committee on Indian Affairs to order.

First of all, I want to apologize for starting late, but as usual, something came up that I did not anticipate.

The oversight hearing before the Senate Select Committee on Indian Affairs will be an inquiry into the issue of Shee Atika, Inc. Shee Atika, Inc. is an Alaska business corporation formed under provisions of the Alaska Native Claims Settlement Act of 1981. Shee Atika, Inc., was incorporated in 1974 and consists of approximately 1,900 Native shareholders, almost all of which are Tlingit or Haida extraction.

Under the terms of the act, Shee Atika received approximately 23,000 acres of land from Congress in 1980 by section 506(c) of the Alaska National Interest Lands Conservation Act, which directed that certain lands on Admiralty Island be conveyed to Shee Atika as part of its land entitlements under ANSCA.

In 1982, Congress confirmed in all respects the title conveyed to Shee Atika by section 315 of Public Law 97-394.

Since 1971, Congress has acted on three separate cccasions to settle and extinguish the land claims of the Native people of Sitka by creating an entitlement. Congress has granted, defined, conveyed, and confirmed this entitlement through ANSCA and ANILCA and Public Law 97-394.

Since 1980, the land conveyed to Shee Atika and the plans for its development have been subject to a variety of lawsuits. These suits have challenged the conveyance of the Admiralty Island lands to Shee Atika and the various permits issued to it.

Shee Atika now contends that as a result of years of litigation and their resulting inability to proceed with the planned development of their land, they are facing imminent bankruptcy.

It is not the purpose of this hearing to air past grievance, but to review Shee Atika's current status, their plans for development, and, of course, to hear the opposition to it.

Based upon the record established at this hearing, a determination will be made as to whether further action is necessary to carry out Congress' intent when it passed the Alaska Native Claims Settlement Act.

Is Don Young here? I am advised that he is not here yet.

I am advised that we have currently about 20 witnesses. I am pleased, obviously, at the participation, but it does put some constraints on the length of testimony. We are going to put the 5-minute rule into effect. It will be initiated as a guideline, but if it gets away from us, I am going to have to remind you that 5 minutes is the intent. When it is appropriate, I would appreciate a summary of remarks, and your entire statements will be placed in the record as indicated.

What I would like to do is to call the first panel. I anticipate that both Don Young and Senator Stevens will be with us at some point in the afternoon, and I hope you will bear with me because at that time I will interrupt the panel in favor of the time constraints which they have.

So, with that, I would ask that the first panel come up. I see that we have enough chairs to accommodate the first panel, Shee Atika, Inc., Roger Snippen, president and chief executive officer.

We have Ethel Staton, chairperson, Shee Atika Board of Directors; Herman Kitka, Shee Atika Board of Directors; Vic Kaczynski, environmental consultant; and we have Richard Banean, attorney.

I welcome you all to the committee, and it is your "druthers" as to what particular order you would like to proceed.

Ethel Staton.

Ms. Staton. Yes?

Senator Murkowski. Please proceed. We welcome you to the committee and look forward to your testimony.

Ms. Staton. Thank you.

Senator Murkowski. Please proceed, Ms. Staton.

STATEMENT OF ETHEL STATON, CHAIRPERSON, BOARD OF DIRECTORS, SHEE ATIKA, INC.

Ms. Staton. My name is Ethel Staton, and I am chairperson of the board of directors for Shee Atika, Inc.

Shee Atika is the corporation formed by the natives of the Sitka area pursuant to section 14(h) of the Alaska Native Claims Settlement Act.

I am accompanied today by Mr. Herman Kitka, a member of the board of directors of Shee Atika, Inc. I have Mr. Roger Snippen, president and chief executive officer of Shee Atika, Inc.; Mr. Vic Kaczynski, a consultant to Shee Atika; and Mr. Richard Anthony Banean, Esquire, one of our attorneys.

I, as well as those accompanying me, have prepared and submitted to the committee staff a written statement, and I would request that my statement and the statements of each of those accompanying me be received by the committee and incorporated into the record.

Senator MURKOWSKI. It will become part of the record and submitted as if read. Please proceed.

Ms. STATON. In brief, I would like to summarize what my statement and the record reflect.

I cannot begin to tell you of our 9 years of harassment by the Sierra Club. It is hard for my shareholders to understand the Claims Act.

First, Congress told us to form a for-profit corporation to receive land so we could harvest the timber, put our people to work, and establish a cash flow. Congress gave us our land; not once, but twice.

Because of the Sierra Club, we cannot move forward as a business corporation as Congress intended. The Sierra Club giant has delayed us every step of the way. They have cost us thousands of dollars with frivolous lawsuits that we do win in the end because Shee Atika has complied with all the laws of the State, Federal, and local governments.

The Sierra Club has manipulated the residents of Angoon into saying things against Shee Atika that are not true. My shareholders have relatives in Angoon.

When the Alaska Native Claim Settlement Act was started, our people worked together, and Congress has found and declared, and I quote,

> There is an immediate need for a fair and just settlement of all claims by natives and native groups of Alaska based on aboriginal land claims. The settlement should be accomplished rapidly, with certainty, in conformity with the real and economic and social needs of the natives, without litigation.

We, Shee Atika, owe $6.5 million, and we are virtually broke. We are mounting interest daily on our loans and mortgages, but we have been very fortunate that our creditors have been understanding. We have exhausted all avenues to borrow money to fight the force of an organization that feels it has to win, and that is the Sierra Club; that has to pit the Indians against each other, and told Congress that they were wrong in giving us our heritage land.

I would like to thank this committee for hearing us. Please look at measures that would let the Claims Act fulfill our dream.

Thank you.

[The prepared statement follows. Testimony resumes on p. 33.]

PREPARED STATEMENT OF ETHEL STATON, CHAIRPERSON, BOARD OF DIRECTORS, SHEE ATIKA, INC.

I am Chairperson of the Board of Directors of Shee Atika, Inc. Shee Atika was incorporated in 1974 pursuant to Section 14(h)3 of the Alaska Native Claims Settlement Act, and it has approximately 1,900 shareholders, most of whom are Tlingit, Haida and Tsimshian Indians. I have been a member of the Board of Directors since Shee Atika was incorporated. We have, since our incorporation, faithfully complied with every Federal and state law and regulation affecting us, and in return for this compliance we have been the victim of an unrelenting attack by the Sierra Club and others to preclude us from enjoying the benefits of the Alaska Native Claim Settlement Act, because the Sierra Club is of the opinion that there should be no commercial timber development on Admiralty Island. Attached to my statement are copies of affidavits of Nelson Frank, Theodore Borbridge, Andrew John Hope, III, Raymond Perkins and John Davis of the Shee Atika Board.

Because we do not share in the monetary provisions of the Settlement Act, with minor exception we have lived since our inception on credit. As Mr. Snippen's statement submitted to the Committee details, we no longer can secure credit and we are correctly perceived by our auditors as suffering from "conditions which may well indicate that . . . [Shee Atika] will be unable to continue in existence." This sad state of affairs has been brought about in the main by the Sierra Club, aided by Angoon and Kootznoowoo, Inc. As the statement submitted to the Committee by our attorney shows, the Sierra Club and its allies have tied us up in the agencies and the courts to such an extent that we are unable to secure corporate financing and we are unable to economically harvest our timber. Many allegations are made by the Sierra Club, Angoon and Kootznoowoo, but the record shows that whenever those allegations ultimately reach the decision making process before an agency or a court, they are found to be without merit and unsupported by evidence. For example, wild allegations have been made that our proposed activites at Cube Cove would destroy the subsistence uses of the Natives of Angoon and in the process destroy the Tlingit culture. Numerous affidavits were submitted in reference to these allegations. But when the issue came to hearing before the Hearing Officer of the Department of Environmental Conservation, no showing was made that subsistence would be adversely affected, and in fact, affirmative findings were made to the contrary. The same was true when similar allegations were put before Judge Pegues of the state court system, when we commenced some selective logging on the island. A summary of the litigation and a brief history are attached to this Statement, for the Committee's information.

Of course, assertions of the destruction of subsistence and the destruction of culture are effective weapons for raising funds and for capturing the eye of the public and enlisting its support, but those assertions and allegations do not comport with the facts.

The same is true with the assertions and allegations made by the Sierra Club. Certainly those allegations aid the Sierra Club in raising funds on a national level to seek our destruction, but again, whenever the merits of the issues must be decided, they are decided against the Sierra Club and they will in the future be decided against the Sierra Club. Unfortunately, it is very doubtful that Shee Atika can outlast the judicial process, that will result in vindication of our actions.

I am at a loss as to how this can happen. Congress put us on North Admiralty Island and in late 1982 confirmed our right to be there and to harvest our timber. Yet we are not only precluded from enjoying our Settlement Act lands, we are being driven to bankruptcy. The Sierra Club is effectively thwarting implementation of the Settlement Act and of the Alaska National Interest Lands Conservation Act.

Mr. Chairman, we do not know if Congress intends to let the Sierra Club get away with this, but somehow Shee Atika will keep up the fight, even if, or when, we have to close our doors or are forced into bankruptcy court.

State of Alaska)
) ss:
City of Sitka   )

AFFIDAVIT OF
THEODORE C. BORBRIDGE

Theodore C. Borbridge, being first duly sworn, deposes and states as follows:

1. I am a resident of Sitka, Alaska, a Tlingit Indian, a shareholder in Shee Atika, Inc., and I have been a member of the Board of Directors since Shee Atika was formed in 1974 pursuant to the provisions of the Alaska Native Claims Settlement Act and applicable state law.

2. I am a self-employed commercial fisherman, a semi-professional photographer and employee of the Public Health Service. I am presently Treasurer of Shee Atika, Inc., Treasurer of Shee Atika Hotels, Incorporated, and a member of the Finance and Investment, Policy and Executive Committees of Shee Atika, Inc. As an active member of the Board of Directors since Shee Atika, Inc., was formed in 1974, I am quite familiar with the difficulties Shee Atika has experienced in attempting to secure the benefits promised to it by Congress pursuant to the 1971 Settlement Act.

3. The only benefit Shee Atika, Inc., receives under the Settlement Act is title to land. Shee Atika does not share

generally in the monetary provisions of the Settlement Act. Therefore, to enjoy any benefits of the Settlement Act, Shee Atika must receive title to its land and it must be able to develop those lands commercially.

4. The Secretary of the Interior, by regulations, made available certain lands for selection by Shee Atika. Ultimately, Shee Atika selected lands in the Hood Bay Area of Admiralty Island. Its selections there were opposed by Sierra Club, but were not opposed initially by the people of Angoon. Ultimately, lawsuits were filed to preclude the Secretary from conveying the lands so selected, and in an effort to resolve the dispute, and mainly to remove the claims then made by the people of Angoon that the Hood Bay selections were too close to their village, the Board of Directors agreed to move to North Admiralty Island if Congress would confirm title to Shee Atika in those lands. Congress did this by Section 506 (c) of Public Law 96-487, the Alaska National Interest Lands Conservation Act.

5. The Board of Directors was naive enough to think that this would settle the litigation over Shee Atika's entitlements under the Settlement Act because the lands were approximately 35 miles away from the village of Angoon. The Sierra Club, and others, however, have continued to do everything within their power to preclude us from enjoying the benefits of the Settlement Act by commercially developing our lands and to date they have been successful. Their success has not been on the merits

before the administrative agencies or the courts, but by the perversion of the judicial process. Every time an issue has finally gone to hearing the determinations have been made in favor of Shee Atika. For example, the administrative challenges to the easements and the restrictions and initial conveyances were finally resolved by the Secretary of the Interior in favor of Shee Atika. Next, the challenge to the state's certificate of assurance that the proposed log transfer facility at Cube Cove was in compliance with state water quality standards resulted in the hearing officer ruling 100% in favor of Shee Atika and against the Sierra Club and Angoon and the Commissioner for DEC affirming that decision. Most recently, after the court was accorded an opportunity to review all of the evidence, rather than that submitted by the Sierra Club and Angoon, evidence previously rejected by the Hearing Officer and the Commissioner of DEC, the District Court for Alaska dissolved an injunction it prematurely granted and authorized Shee Atika to helicopter log.

6. However, the Sierra Club and Angoon are able to use the delays in the judicial process to continually preclude Shee Atika from making substantial progress in the commercial development of its timber. Shee Atika has no apparent sources of further credit at this juncture and the closing of its doors appears likely, unless something unanticipated develops.

Theodore C. Borbridge
Theodore C. Borbridge

DATED this 26th day of October 1983.

SUBSCRIBED and SWORN to before me this 26th day of October 1983.

Leona Williams
Notary Public for the State
of Alaska

My Commission Expires: 9/10/86

State of Alaska)
) ss:
City of Sitka)

AFFIDAVIT OF

NELSON D. FRANK

Nelson D. Frank, being first duly sworn, deposes and states as follows:

1. I am a Haida Indian, a shareholder of Shee Atika, Inc., and I have been on the Board of Directors since 1974, when Shee Atika, Inc. was incorporated. From 1974 to 1980 I served as President and Chairman of the Board. In addition to being a member of the Board of Directors of Shee Atika, Inc., I serve on the Sitka Bureau Assembly. I was employed as an Air Traffic Controller for the Federal Aviation Administration, before I retired. I now engage in commercial fishing. I am a resident of Sitka, Alaska.

2. Shee Atika, Inc., is now a financial disaster, because of the unrelenting attacks by the Sierra Club on Shee Atika's quiet possesssion and enjoyment of its lands conveyed to it by Congress pursuant to the Alaska Native Claim Settlement Act. Shee Atika has always been opposed by the Sierra Club, when it came to land selections on Admiralty Island. This was not the case at first with the residents of Angoon, and in my opinion, the residents of Angoon are being used by the Sierra

Club to help it achieve its goal. Unfortunately, the residents of Angoon may now believe everything they have been told. For example, the residents of Angoon have complained that the construction of a log transfer facility at Cube Cove, which is necessary for Shee Atika to develop its lands on Admiralty Island, would destroy marine subsistence utilized by the people from Angoon. However, after a full trial before a Hearing Officer of the Department of Environmental Conservation, in which the Sierra Club and Angoon were active participants, it was found that this was absolutely not the case. In fact, there was no evidence to support their position.

3. Shee Atika initially selected its lands at Hood Bay, on Admiralty Island, as a compromise to selecting other lands it felt were better adapted to its needs, but which the Sierra Club and the people from Angoon did not want Shee Atika to select. After we selected at Hood Bay, the Sierra Club and Angoon sued to preclude receipt of those lands. As a compromise, and to meet the stated objections of the people of Angoon to our selections at Hood Bay, that they were environmentally sensitive and that they were so close to the village that commerical development would have adverse impacts, we agreed to go to North Admiralty Island, approximately 30 miles away, and Congress confirmed this compromise. The net result has been further delay and litigation. We would have been better off litigating our selection at Hood Bay, because we could now be developing those lands. Instead, because we were willing to compromise the corporation and its shareholders must suffer further.

Nelson D. Frank
Nelson D. Frank

DATED this 26th day of October, 1983.

SUBSCRIBED and SWORN to before me this 26th day of October, 1983.

Leona Williams
Notary Public in and for
the State of Alaska.
My Commission Expires: 9/10/86

State of Alaska)
) ss:
City of Sitka)

AFFIDAVIT OF
ANDREW JOHN HOPE, III

Andrew John Hope, III, being first duly sworn, deposes and states as follows:

1. I am a Tlingit Indian, a shareholder in Shee Atika, Inc., and I presently serve as a member of the Board of Directors of Shee Atika. I have been a member of the Board since 1979 and I served on the Interim Board of Directors in 1974. I am a resident of Sitka, Alaska and I am Executive Director of the Sitka Community Association, a Federal Indian Tribe with 2200 members. Previously, I served as Chairman of the Sitka OEDP Committee and I have served as Chairman of the Shareholder Relations Commmittee and as a member of the Corporate Policy Committee of Shee Atika, Inc.

2. I have been and I continue to be very active in matters affecting the affairs of Natives in Southeast Alaska and specifically in connection with the affairs of the Natives of the Sitka area.

3. Because of my position as Executive Director of the Sitka Community Association, I am quite familiar with the

employment problems facing the Natives of Sitka, and in the years since I have been active in Native affairs, I have never known the employment situation to be so bad for the Natives. In my opinion, the unemployment for Natives of the Sitka area is somewhere between 55% and 65%, and the prospect for jobs in the future is dim. One hope would be the ability of Shee Atika, Inc., to commence the commercial development of its lands on North Admiralty Island, which it received pursuant to the Alaska Native Claim Settlement Act. This would offer employment opportunities to many of the Shee Atika shareholders. Because Shee Atika does not share in the financial benefits of the Settlement Act, the Shee Atika shareholders will benefit only through employment, which the corporation can offer to them. While commercial development of Shee Atika's properties would generate a positive cash flow, due to the inordinate debt we have incurred trying to survive pending that opportunity, it will be a long time before dividends can be paid out.

Andrew John Hope III
Andrew John Hope, III

DATED this 26th day of October 1983.

SUBSCRIBED and SWORN to before me this 26th day of October 1983.

Leona Williams
Notary Public for the State of
Alaska

My Commission Expires: 9/10/86

AFFIDAVIT OF
JOHN DAVIS

John Davis, being first duly sworn, deposes and states as follows:

1. I am a Tlingit Indian, a resident of Sitka, and I have been a member of the Board of Directors of Shee Atika, Inc., since 1982. I am a long-time resident of Sitka and I am employed by the United States Postal Service. I am quite familiar with the issues involved surrounding Shee Atika's land selections at North Admiralty Island and its intent to develop those commercially and the opposition thereto led by the Sierra Club and joined in by the village of Angoon.

2. I have friends and family in Angoon and in my opinion the position taken by Angoon does not reflect the views of everyone who lives in Angoon. There are many, many people in Angoon who do not agree with the legal positions taken by the Sierra Club or the City of Angoon and do not feel threatened by the development of Shee Atika's lands.

John Davis
John Davis

Dated this 25 day of Oct 1983.

SUBSCRIBED and SWORN to before me this 25th day of October 1983.

Leona Williams
Notary Public in and for
the State of Alaska
My Commission Expires: 9/10/86

AFFIDAVIT OF RAYMOND C. PERKINS

Raymond C. Perkins, being first duly sworn, deposes and states as follows:

1. I am a Tlingit Indian, a shareholder in Shee Atika, Inc., and I have been a member of the Board of Directors of Shee Atika, Inc., since 1980. I reside in Sitka, Alaska. I am the owner of the Lu-Ray Cleaners, and I am the Manager of the American Legion Club. Previously, I was employed by the Bureau of Indian Affairs. I am a member of the Governor's Equal Opportunity Board and I am a member of the Personnel, Policy and Nominating Committee of Shee Atika, Inc.

2. The current financial situation of Shee Atika, Inc., is desperate, and I fear that it may be necessary for us to close our doors. If that happens, it will be a sad commentary on the Alaska Native Claim Settlement Act. Shee Atika, Inc., has approximately 1900 Native shareholders, and about 1,250 of them reside in the Sitka area. So many of them are without employment, without receipt of any benefits anymore, and in desperate need for employment and income, that the inability of the corporation to provide either jobs or dividends because of the Sierra Club's activities is a sorry state.

3. The litigation the Sierra Club brings runs on forever, it precludes us from receiving the benefits of the Settlement Act. It seems to me that only Congress can take care of us, but sometimes I wonder if even Congress can do it, in light of its previous actions on our behalf.

Raymond C Perkins
Raymond C. Perkins

SUBSCRIBED and SWORN to before me this 24th day of October, 1983.

Leona Williams
Notary Public in and
for the State of Alaska

My Commission Expires: 9/10/86

A BRIEF HISTORY OF THE LITIGATION SURROUNDING SHEE ATIKA'S ADMIRALTY ISLAND LAND SELECTIONS

Background

Shee Atika, Inc., is an Alaska Native Corporation organized in 1974 for the benefit of the Natives of Sitka, Alaska, pursuant to Section 14(h)(3) of the Alaska Native Claims Settlement Act. The Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., terminated all of the aboriginal claims of the Natives of Alaska. In return, the Natives were entitled to a settlement totaling 40 million acres of land and $962,500,000 encompassed in the Alaska Native Fund.

Section 14(h)(3) of the Act made special provision for Natives residing in areas which had originally been Native villages but were now populated primarily by non-natives. When the Natives in these four areas (Sitka, Juneau, Kodiak and Ketchikan) incorporated, each resulting corporation was entitled to the conveyance of 23,040 acres of land. However, these so-called "urban" corporations, including Shee Atika, were not entitled to share in the monetary provisions of the Act.[1]

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[1] The legislative history of the Settlement Act provides no explicit explanation as to why Shee Atika was excluded from receiving payment from the Alaska Native Fund. The likely explanation is that it was merely an oversight. No provision had been made for the urban corporations in the original version of

(Footnote Continued)

Because Shee Atika has been prevented by litigation from first selecting its land entitlement and then from developing its lands, the corporation has existed almost entirely on borrowed funds for nearly a decade.[2]

Following its incorporation in 1974, Shee Atika proceeded to make its land selections under the regulations promulgated by the Secretary of the Interior. Those regulations required that requested withdrawals were to be made from within a fifty-mile radius of the City of Sitka. Encompassed within this circle were lands on Admiralty Island. Shee Atika nominated various lands for withdrawal, including lands located at Chaik Bay on Admiralty Island. The Secretary however, withdrew other lands on Admiralty Island located generally in the Hood Bay area. Shee Atika selected, as part of its Settlement Act land entitlements, the Hood Bay area withdrawals.

Goldbelt, Inc., the corporation for the Natives of Juneau, also selected lands on Admiralty Island, located approximately 30 miles to the north of Shee Atika's selections.

(Footnote Continued)
the bill, H.R. 10367. Language was subsequently added in the Senate allowing the urban Natives to share in the land settlement, but Congress failed to modify similarly the provisions of the bill dealing with the Alaska Native Fund.

[2] The urban corporations received, pursuant to Section 14(g) of the Act of January 2, 1976 (Public Law 94-204), $250,000 to be used solely "for planning, development, and other purposes for which the corporations . . . are organized under the Settlement Act." 89 Stat. 1154.

Litigation Over the Admiralty Island Withdrawals

The Sierra Club and Kootznoowoo, Inc., the village corporation for the Natives of Angoon, which is a village located on Admiralty Island, both filed suits challenging the Secretary's authority to make the Admiralty Island withdrawals. Sierra Club v. Andrus, No. A76-3 (D. Alaska, filed January 7, 1976); Kootznoowoo, Inc. v. Andrus, No. 175-257 (D. Alaska, filed December 22, 1975). Shee Atika and Goldbelt intervened as defendants in both suits.

While these lawsuits were pending, Congress began consideration of what was to become the "Alaska National Interest Lands Conservation Act of 1980" ("ANILCA"). Section 506 of that legislation was intended to end the litigation surrounding Shee Atika's and Goldbelt's land withdrawals on Admiralty Island. In short, it ratified a previous settlement agreement whereby Goldbelt relinquished its land entitlement on Admiralty Island in return for other land located "off-island." The Act then directed the Secretary of the Interior to convey to Shee Atika Goldbelt's north Admiralty Island selections, including the area surrounding Cube Cove.[3]

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[3] The report of the Senate Committee on Energy and Natural Resources contained the following explanation for Section 506(c):

> The Committee is aware that this amendment would

(Footnote Continued)

Litigation Challenging the Land Conveyance to Shee Atika

In the spring of 1981, after public hearings in which the Sierra Club and Kootznoowoo participated, the Secretary of Agriculture designated appropriate easements across the lands to be conveyed to Shee Atika.[4] The Secretary of the Interior then prepared a draft interim conveyance for public review.

In August, 1981, before the conveyance could take place, the Sierra Club instituted litigation before the Alaska Native Claims Appeal Board (ANCAB) and the Interior Board of Land Appeals (IBLA) challenging the proposed easements incorporated into the draft interim conveyances. Appeal of Sierra Club, Inc. and Karl Lane, ANCAB Vls. 81-7 and Appeal of Sierra Club, Inc. and Karl Lane, IBLA 82-62. Kootznoowoo, Inc., also appealed to

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(Footnote Continued)

> settle pending litigation against the Secretary of the Interior. The lawsuit challenges the validity of the Secretary's withdrawal for Native selection on Admiralty Island. In discussing the amendment, the committee noted that Shee Atika receives no funds under the Settlement Act and, because of the lawsuit, has yet to receive its land entitlement. Without a legislative solution, it will be many years before the litigation is concluded, and Shee Atika, Inc. could go bankrupt in the interim.

S. Rep. No. 413, 96th Cong., 2d Sess. 215 (1980).

[4] Section 17(b) of the Settlement Act required the designation of easements across property selected by the Native corporations "which are reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important."

ANCAB. Appeal of Kootznoowoo, Inc. and City of Angoon, ANCAB Vls. 81-6.

At Shee Atika's request, the Secretary of the Interior withdrew the appeals from the respective boards pursuant to appropriate federal regulations, and on December 4, 1981, he issued a final decision in the combined appeals rejecting the petitioners' claims. The appeals were accordingly dismissed. Based upon that decision, the Secretary, on December 9, 1981, conveyed the lands described in Section 506(c) to Shee Atika by patent and interim conveyance.

Shee Atika recorded these conveyances in the First Judicial District of Alaska. Shee Atika's management then commenced searching for appropriate corporate financing that would permit it to consolidate its debt, reduce the cost of that debt and commence the commercial development of its lands, thereby extending employment to many of its unemployed shareholders and eventually paying dividends.

However, on March 10, 1982, the Sierra Club filed a lawsuit in the United States District Court for the District of Columbia challenging the validity of the conveyances to Shee Atika. Sierra Club v. Watt, et al., No. 82-0700. Shee Atika was not joined as a party to that suit. But on June 24, 1982, the Sierra Club filed a lis pendens notice in the Juneau Recording Office referencing the District of Columbia lawsuit "to invalidate the Interim Conveyance of Real Property dated December 9, 1981, from defendant Watt to Shee Atika. . . ." On August 27, 1982, the United States filed a motion to dismiss the District of Columbia lawsuit, or in the alternative, transfer venue to Alaska. That motion is still pending.

Shee Atika again returned to Congress -- this time to secure confirmation of the title to its land. Section 315 was added to the appropriations bill for the Department of the Interior for fiscal year 1983 as follows:

> The titles conveyed by and the easement [sic] and restrictions heretofore reserved and imposed by the Secretary of the Interior pursuant to Public Law 96-487 are hereby confirmed in all respects. Provided: that nothing herein shall be deemed to amend the Alaska National Interest Land Conservation Act or the Alaska Native Claims Settlement Act.

P.L. 97-394, 96 Stat. 1998.

Despite the enactment of this confirmatory provision, the Sierra Club has failed to remove the *lis pendens* from Shee Atika's title to the north Admiralty Island property. On March 15, 1983, Shee Atika filed an action in the Alaska State Superior Court seeking the removal of the *lis pendens* from the title to its Admiralty Island lands. That action was removed to the Federal District Court for the District of Alaska (Docket No. A83-209 Civ.) where it is currently pending.

Litigation to Prevent the Economic Development of Shee Atika's Land

Despite the legal challenges to the conveyance of its North Admiralty Island lands, Shee Atika has proceeded with its plans to conduct a logging operation on its property. Efforts have focused on the construction of a log transfer facility at Cube Cove. Construction of the facility requires that Shee Atika secure from the United States Army Corps of Engineers a permit pursuant to Section 404 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1344). To qualify for the Section 404 permit, Shee Atika was required to obtain and in fact did obtain on March 10, 1982, from the Alaska State Department of Environmental Conservation (DEC), a Certificate of Reasonable Assurance that its proposed log transfer facility is in compliance with the state water quality standards.

The Sierra Club challenged the issuance of the Certificate of Reasonable Assurance before the DEC, and moved for injunctive relief in November and December of 1982. The Certificate of Reasonable Assurance was suspended pending the outcome of the administrative appeal. In August, the DEC decided that appeal in Shee Atika's favor. However, the Sierra Club has filed a petition for review of that decision in the Alaska Superior Court. That petition is currently pending.

Shee Atika received its Section 404 permit on April 7, 1982. On January 13, 1983, the City of Angoon filed suit in Federal District Court for the District of Alaska against the

Secretary of the Army and numerous other federal defendants alleging that the issuance of the Corps of Engineers permit violated numerous environmental statutes, including the requirement under the National Environmental Policy Act, that an Environmental Impact Statement (EIS) be prepared. Angoon v. Marsh, No. 83-0001 Civ. (D. Alaska, filed January 13, 1983). The Sierra Club intervened in that action, and Shee Atika subsequently moved to intervene. Before Shee Atika's motion to intervene was granted, however, the federal defendants, the Sierra Club and Angoon, entered into a stipulation whereby Shee Atika's Corps permit was suspended pending the completion of an EIS. This stipulation was entered into over the strong objection of Shee Atika. Claims raised under the Coastal Zone Management Act, Clean Water Act, and Alaska National Interest Lands Conservation Act are still pending in that suit.

Through all of this Shee Atika has desperately sought funds to keep the corporation in business pending the full-scale implementation of its logging operation. It already owes substantial sums of money. Its efforts to obtain loans from commercial lenders, have, of course, been severely precluded by the lis pendens on the title to its Admiralty Island lands. That cloud on its title has made it impossible for Shee Atika to use its land, essentially its only real resource, as collateral.

The most recent audit of its finances states "there are conditions which may indicate" that Shee Atika "will be unable to continue in existence."

SUMMARY OF LITIGATION

I. **Lawsuits Brought by the Sierra Club and/or the City of Angoon and Kootznoowoo Against Shee Atika or over Shee Atika's Proposed Development**

1. Kootznoowoo, Inc., et al. v. Andrus, and Sierra Club, et al. v. Andrus, Civ. No. A75-257 (consolidated), United States District Court, District of Alaska.

   Challenged the Secretary of the Interior's withdrawals of the lands at Hood Bay, Admiralty Island, for Shee Atika, Inc., and the withdrawals in the Ward Creek - Lake Kathleen area (Shee Atika's present lands) for Goldbelt, Inc. Dismissed as moot on February 12, 1982, as a result of the passage of section 506(c) of ANILCA.

2. Appeals of the Sierra Club, Kootznoowoo and the City of Angoon to the Alaska Native Claims Appeal Board (ANCAB), VLS 81-6 and VLS 81-7; Appeal of the Sierra Club to the Interior Board of Land Appeals, IBLA 82-62, filed August, 1981.

   Challenged the Secretary of the Interior's draft decision of Interim conveyance of the ANILCA section 506(c) lands (North Admiralty Lands) to Shee Atika. The Sierra Club and Angoon alleged that the conveyed lands remained part of the Admiralty Island National Monument, precluding timber harvesting, that section 22(k) of ANCSA precluded Shee Atika from harvesting timber on the lands, that the easements reserved failed to guarantee a full right of public use and access to public lands, that the conveyance failed to protect the subsistence rights of Angoon, and that BLM failed to perform the subsistence analysis required by section 810 of ANILCA. The Secretary of the Interior rejected all these claims in a decision dated December 4, 1981.

3. Sierra Club v. Watt, et al., Civ. No. 82-0700, United States District Court, District of Columbia, filed March 10, 1982.

   Asks that the Secretary of the Interior's conveyance of the North Admiralty lands to Shee Atika be rescinded. The Sierra Club allegations are substantially similar to those made and rejected in the administrative appeal above, with an additional allegation involving the application of the National Environmental Policy Act. A motion filed by the Justice Department to dismiss the case for failure to join the indispensable parties of Shee Atika and Sealaska, or, in the alternative, to transfer the case to Alaska where Sealaska and Shee Atika can be joined, has been pending for approximately 14 months.

On June 24, 1982, the Sierra Club filed a lis pendens in the Juneau Recording Office referencing Sierra Club v. Watt described above (I. 3.). Subsequently the Congress passed legislation which included language confirming Shee Atika's title in all respects (P.L. 97-894). Shee Atika filed suit in the U.S. District Court in Anchorage requesting removal of the lis pendens.

4. Angoon v. Marsh, et al., Civ. No. J-83-0001, United States District Court for the District of Alaska, filed January 13, 1983.

Challenges the U.S. Army Corps of Engineers' permit to allow Shee Atika to construct and operate a log transfer facility at Cube Cove. The Secretary of Agriculture and the Administrator of EPA are also named defendants. The Sierra Club, Wilderness Society and Shee Atika have intervened. The case makes allegations regarding a subsistence analysis, section 22(k) of ANCSA and timber harvesting prohibition similar to those raised and rejected in the Interior Department appeal above. It also alleges that the Corps is required to prepare an EIS on the log transfer facility, that an NPDES permit is required, that the EPA administrator must enjoin the project because it violates state water quality standards (N.B. the State of Alaska has certified the project as consistent with such standards) and that the defendants must enjoin the project as violating the Alaska Coastal Management Program (N.B. the State has certified the project as consistent with its coastal management program). The EIS claims have been dismissed pursuant to a stipulation entered into between the Sierra Club, Angoon, and the Justice Department in which the Corps agreed to suspend the permit and prepare and EIS. The Stipulation was signed over the express objection of Shee Atika, whose motion to intervene had not been granted at the time.

When Shee Atika sought to remove logs by helicopter into Chatham Strait, the plaintiffs amended their complaint to request an injunction. A temporary injunction was granted before Shee Atika had an opportunity to present evidence. After Shee Atika made its case the injunction was dissolved; however, it was not dissolved before the onset of winter weather made it impossible to remove the logs by helicopter for several months. The value of the logs will be significantly decreased because of the delay in their removal.

5. Appeal of the Sierra Club and the City of Angoon to the Certificate of Reasonable Assurance Issued to Shee Atika, Inc., No. NAPACO 071-OYD-2-810133, before the Alaska Department of environmental Conservation, filed May 26, 1982.

   Challenges the Alaska Department of Environmental Conservation's decision to issue a Certificate of Reasonable Assurance that Shee Atika's proposed log transfer facility at Cube Cove will meet State water quality standards. After numerous delays caused by the Sierra Club, a seven-day evidentiary hearing was held in March, 1983. In August, the Commissioner of Environmental Conservation ruled against the Sierra Club on all issues. The ruling has been appealed in State Court.

6. Sierra Club v. DNR, No. 1 JU 83-218 Civ., Alaska Superior Court, filed January, 1983.

   Challenges a decision by the Commissioner of the Alaska Department of Natural Resources that the Notice of Intent to log 25-acres filed by Shee Atika pursuant to the Alaska Forest Practices Act is not a permit, and therefore is not an administrative action which could be appealed to the Commissioner under the Forest Practices Act.

7. Sierra Club v. DEC, No. 1 JU-82-1919 Civ., Alaska Superior Court, filed November 18, 1982.

   Challenged a decision by the Commissioner of the Department of Environmental Conservation that he lacked jurisdiction in the appeal challenging the Certificate of Reasonable Assurance to enjoin Shee Atika from harvesting timber on the area to become the log sort yard. Judge Carpeneti held that the sort yard was an integral part of the log transfer facility and that the Commissioner had the authority under the Alaska Coastal Management Act to enjoin the clearcutting, notwithstanding the fact that Shee Atika did not need the Certificate of Reasonable Assurance to harvest timber. Shee Atika permitted to proceed pursuant to DEC decision [no. 5, supra.]

8. Appeal of LAS 554, Water Rights Application of Shee Atika, Inc.

On September 6, 1983, the Sierra Club filed an appeal of a decision by the Department of Natural Resources on an application by Shee Atika for water appropriation from a creek above Peanut Lake on Admiralty Island. The appeal is pending.

II. Threatened Legal Actions

Both the Sierra Club and Angoon on August 23, 1982, filed Notices of Intent to sue the Secretary of Commerce, alleging that the log transfer facility constitutes a taking of marine mammals in violation of the Endangered Species Act and the Marine Mammal Protection Act.

III. Other Actions

The Sierra Club and Angoon have opposed Shee Atika's application for a tidelands lease from the State of Alaska of certain portions of Cube Cove. The application is currently being processed.

June 10, 1983

Mrs. Ethel Staton
Chairperson
SHEE ATIKA, INC.
P.O. Box 1949
Sitka, Alaska 99835

Dear Ethel:

I would like to thank you and the Shee Atika Board of Directors for inviting Sealaska to your Board meeting to discuss Shee Atika land selections on Admiralty Island. This meeting initiated a higher level of communication than had existed up to this time and ought to form the basis of future communication and co-operation.

During ~~our Mon~~day meeting, I indicated to you that based upon our meeting with Shee Atika that I would set up a subsequent meeting with the City of Angoon, Kootznoowoo, Inc. and the Sierra Club representatives in order to ascertain their current position and to communicate Sealaska's perceptions of the situation. We had such a meeting in Angoon Wednesday. Please be assured, however, that Sealaska did not and does not purport to represent Shee Atika's interests and therefore has not led any one to believe that Sealaska can speak for or make commitments of any kind or sort on behalf of Shee Atika, Inc.

Among the many things that were said at our meeting with you was that Shee Atika would consider alternatives to its selections on Admiralty Island if:

1: The proposal was presented to Shee Atika by other parties; and

2. The proposal provided Shee Atika with an enhanced asset base; and

3. There is sufficient indication that all parties have an affirmative and measureable commitment to the process.

In light of these considerations and in order to start the process of putting together alternative substantive proposals and strategic plans, I have authorized and directed Sealaska's

SEALASKA CORPORATION

principal Natural Resources Officer, Bob Loescher, to meet with his counterpart from Kootznoowoo, Inc., Sterling Bolima and Susan Ruddy of Environmental Mediation in order to attempt to formulate proposal alternatives which might be acceptable as a starting point for discussions. Let me emphasize that this proposed process is an initiative to start discussion on a variety of settlement alternatives. All parties to Wednesday's meeting seem to look at the process positively and see this as an opportunity to make some progress in the resolution of the existing dispute.

Sealaska has communicated several of Shee Atika's stated positions and concerns to Kootznoowoo, Angoon and the Sierra Club. They are:

1. Shee Atika will continue the existing litigation on its merits because it does not believe there are any current viable alternatives.
2. Shee Atika is not in the financial position to commit resources to seriously study alternatives and that the search for alternatives should include some way of keeping Shee Atika fiscally whole during the process.
3. Juxtaposed to Off Admiralty alternatives, Angoon and Sierra Club should consider mitigating factors which could permit Shee Atika to remain on Admiralty Island and harvest and market its timber.

Several discussion with Durwood Zaelke of the Sierra Club have resulted in indications that they will continue to be active in all litigation and administrative proceedings; however, the Sierra Club will consider what role and what contribution they could make to both the mitigation measures issue and the Off Admiralty Island Exchange. A definitive response should be received in a couple of weeks.

Our hope is that you will see merit in this approach and where possible, contribute and cooperate as the effort moves forward. At any time, please contact me if you have any concerns or comments on these development.

Sincerely,

SEALASKA CORPORATION

Byron I. Mallott
Chairman & Chief Executive
Officer

cc: Board of Directors, Shee Atika, Inc.
Board of Directors, Sealaska Corporation
Ivan Gamble, President, Kootznoowoo, Inc.
Durwood Zalke, Sierra Club
Susan Ruddy, Esquire

MARK ANDREWS NORTH DAKOTA CHAIRMAN
BARRY GOLDWATER ARIZONA | JOHN MELCHER MONTANA
SLADE GORTON WASHINGTON | DANIEL K INOUYE HAWAII
FRANK H MURKOWSKI ALASKA | DENNIS DE CONCINI ARIZONA
PAUL ALEXANDER STAFF DIRECTOR
PETER S TAYLOR GENERAL COUNSEL
MAX I RICHTMAN MINORITY STAFF DIRECTOR

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C. 20510

November 8, 1983

Ethel Staton
Chairperson
Shee Atika Board of Directors
P.O. Box 829
Sitka, Alaska 99835

Dear Ms. Staton:

Thank you for your participation in the Shee Atika Oversight Hearing chaired by Senator Frank Murkowski on November 2nd and 3rd, 1983. I realize the distance you traveled and the length of time spent so far on this issue.

Your testimony will be published in the record as indicated at the hearing. I must also remind you Senator Murkowski stated the record would remain open for two weeks meaning additional testimony must be submitted and/or postmarked no later than THURSDAY, NOVEMBER 17, 1983.

If you have any questions please feel free to contact Jerry Reichlin of the Committee staff at 202/224-2251 or 224-6665.

Warm regards.

Sincerely,

Mark Andrews
Chairman

MA:JW:gw

SHEE ATIKA, INCORPORATED

P.O. BOX 1949
SITKA, ALASKA 99835
PHONE (907) 747-3539
or 747-3534

1983 NOV 23 AM 8 52

November 16, 1983

The Honorable Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Mark Andrews,

I do have some additional information after listening to the Sierre Club, City of Angoon and Sealaska, that should be added to the record.

Enclosed is a copy of a newspaper clipping dated October 24, 1983 and an answer by a shreholder of Shee Atika, Mr. John Nielsen.

The mayor of Angoon says they are protecting their substance culture and all the facts have said "no way would 2% of one million acreas effect subsistance". Their sworn statements also say they use the cube cove area and that is our private land. We have monitored the area since January 1, 1981 and put advertisements in all the Alaska newspapers telling the people that they could go on our private property if they asked permission. In 1982, we received eight requests and granted them and in 1983 we received four requests.

Angoon says they are suffering, they sould because of the bad faith and the untruths they are saying about Shee Atika and our people.

We were invited to Admiralty Island by Kootznawoo, Angoon as was Goldbelt, Juneau so that we would all manage the land together. Then came the Sierre Club to manipulate them and let them believe that Angoon owns the land. They do not. They are in ANSCA just like Shee Atika. They say it is a municipality against a corporation. They want the best of two worlds, sothey do have a double standard. Congress told all native villages and urban cities to form a for profit corporation to receive land. This we all did and now, Angoon wants to change the rules to suit the SieerreClubs wishes, to be treated special. My people came to Sitka for economic reasons, to work, feed their families, educate their families, get off of welfare and government hand outs.

It is time for the City of Angoon to show how much money they have used to fight Shee Atika from their government funds or from the Sierre Club or from Kootznawoo.

Mr. Bolima, an employee of Kootznawoo does the negotiating for the Sierre Club, he said that Dr. Wayburn could get us anything we wanted, as long as we move off of Admiralty Island.

Mr, Jack Hession Alaska Representative for the Sierre Club has told my board that the mining company on Admiralty Island has grandfather rights and that we do not. How far off can he be? He is missing the point of ANSCA, that it is to compensate us for our grandfathers rights.

Mr. Hession came into our office today with a colored map suggesting that we look at another area, off Admiralty. Virtually they suggest an exchange with no back up. It is not a completed package. I feel that it is not in good faith, it is to delay, they offer no money for us to even look at what they suggest. It is an area in Louisiana Pacific Co. contingency area. It is an area that our forester studied and passed.

All the Sierre Club wants us to do is to move. They do not care how or what problems we have. Is this the type of good faith they say they excert? My concern is that it is my fudiciary duty to do what is best for my people. Based on all past experience in dealing with the Sierre Club is that they would delay us at any cost to my corporation. They have ANILCA and that should be enough for them.

Sealaska has told you the truth and that is that it will not hurt the Angoon subsistance. Sealaska can no longer help us financially and we do need the money.

I do appreciate you taking the time to address our problems.

Sincerely yours,

Ethel Staton

Ethel Staton
Chairman of the Board

Angoon Joins Suit to Block Area Logging

By SUSAN FROETSCHEL
Sentinel Staff Writer

The village of Angoon's tribal government and 436 of the village's 480 Native residents have filed legal action against Department of Interior Sec. James Watt as part of the continuing effort to prevent a Shee Atika Inc. log-transfer facility from operating on Admiralty Island.

The village's mayor, Edward Gamble Sr., said the suit was filed to protect the residents' subsistence culture.

The new action seeks permission from federal courts in Washington, D.C., to join the ongoing Sierra Club suit alleging Watt's conveyance of 23,000 acres of land on Northwest Admiralty to Shee Atika Corop was illegal. That suit was filed earlier this year.

A hearing on the battle between Shee Atika Inc. and Angoon has been arranged by Sen. Frank Murkowski for Nov. 2 in Washington, D.C., with the Select Committee on Indian Affairs, of which Murkowski is a member.

Angoon is "suffering" and being unfairly criticized by federal officials because of being linked with the Sierra Club in the continuing battle over Shee Atika logging on Admiralty, Gamble said today in a telephone interview with The Daily Sitka Sentinel.

Gamble noted that Watt and U.S. Rep. Don Young were "discouraging" about Angoon's efforts because of Sierra Club involvement.

"These people have something against conservationists," said Gamble, adding that he would prefer seeing the Sierra Club not involved in the discussions over the controversy.

"We're beyond the stage where somebody (Sierra Club) comes to lead us by the hand," Gamble said. Angoon is paying a substantial portion of the costly lawsuits, he said.

Roger Snippen, president of Shee Atika Inc., disagreed with Gamble and said today he is convinced Angoon is being swayed by the Sierra Club. He added the corporation has documents about Sierra Club involvement in Angoon's accusations and actions, which will be presented at the Nov. 2 hearing.

Snippen reported that himself, corporation Chairman Ethel Staton and perhaps one other representative would travel to Washington for the hearing. Gamble said Angoon would send a statement and a representative, who has yet to be chosen. Snippen noted that all he has received so far has been an invitation to the hearing.

"I don't know what to expect," he said.

Both he and Angoon officials noted the trip will be costly.

"The corporation does not have excess funds," Snippen said. "It is necessary we do (attend)."

Snippen discussed the corporation's difficulties.

"It has been 12 years since the claims act and we have yet to see any tangible benefits," Snippen said, talking about the 1971 Alaska Native Claims Settlement Act and adding that the Cube Cove area has been the corporation's fifth land choice and its fourth on Admiralty.

Gamble noted village leaders consider the location of the hearing "might be to our benefit" because hearings in Angoon are usually held with administration assistants who do not have policy-making powers.

In a brief release telephoned into the Sentinel offices by Sierra Club officials today, Gamble commented on Angoon's having 80 percent unemployment. Snippen noted after hearing about the legal action that Shee Atika Corp. has sent letters to Angoon leaders offering to supply jobs for the Angoon unemployed in the logging operations area. The offers were turned down, Snippen said.

Gamble and Snippen noted that since early summer some logging has taken place in the Cube Cove-Peanut Lake area, which is more than 30 miles away from the village and was allotted to the corporation under the 1980 Alaska National Interest Lands Conservation Act.

The corporation was able to start logging this summer after two court rulings knocked out temporary restraining order obtained by the Sierra Club and Angoon. On June 27, Superior Court Judge Rodger W. Pegues denied a request for such a restraining order on transferring logs by helicopter, stating: "Congress has determined that the lands in issue shall be private and open to logging under applicable laws rather than preserved as a wilderness."

However, the corporation has been unable to begin the expensive method of transfer from Cube Cove to a barge in Chatham Strait because of poor weather conditions, Snippen said.

The estimated cost of the special large helicopter from Oregon would be about $35,000 a day, Snippen has said in the past. Today, as in the past, Snippen noted the helicopter must be allowed to operate daily on a continual basis and not in a piecemeal fashion, or the transfer would not be profitable.

The logging will have a gradual rather than a sudden effect on the village's subsistence lifestyle, Gamble said. However, he said, Angoon residents have noticed the deer have begun migrating away from the area and away from Angoon.

"I would like to see them (Shee Atika Inc.) get a new portion of land. It does not have the best logs and it is not the best area to log," said Gamble. He added that the area's characteristics make logging expensive.

"I'm hoping they'll come up with something that will be beneficial to Shee Atika."

Gamble noted that other village corporations had chosen their lands gradually, with time to think over decisions. He said that Shee Atika's choice was fast and "rubber-stamped" by the Secretary of the Interior.

"It's not Sitka versus Angoon; it's a municipality versus a corporation," Gamble said.

LETTER TO THE EDITOR:

In response to the article by Sentinel staff writer, Susan Froetchel. Sitka Daily Sentinel, October 24, 1983, regarding Angoon joins suit.'

My father was born in Killisnoo. We are one people. It is my land too. We should not keep quiet about the Sierre Club working against Shee Atika. Angoon has joined sides with the Sierre Club.

The mayor from Angoon says they are suffering. It is because they have allowed the Sierre Club to manipulate them in order to express the views of the Sierre Club. He wants Shee Atika to move, let the tree rot. He should talk to his hunters and fishermen from Angoon and ask them why they hunt at Peril Straits in logged off areas, it is because the logged off areas bring more foilage for the deer. He says they have 80 % unemployed and yet Shee Atika has offered their people employment. Does the mayor and his 436 people have a double standard? He says save Admiralty Island and then his corporation goes down to Prince of Wales to their logging. What is the difference? What about our people?

The mayor maintains that it is their municipality against a corporation. He supports Kootznawoo Corporations' land selection. He should support all native land selection. His statements are conflicting. He is not a forester to say which logs are the best or which areas to log.

Shee Atika's land selection was neither fast or rubber stamped as we are twelve years into the act and we are still waiting to be a business corporation as Congress intended.

Ax Xooni (Your Brother)

John Nielsen

John Nielsen 966-2668

Box 4271
Mt Edge AK 99835

10-28-83

Senator MURKOWSKI. Thank you very much, Ms. Staton. I appreciate that concise and very direct statement. Obviously, I will have questions at the conclusion of the panel.

I presume your next witness is Mr. Herman Kitka, who is a board member of Shee Atika?

Mr. KITKA. Yes, sir.

Senator MURKOWSKI. Please proceed, Mr. Kitka.

STATEMENT OF HERMAN KITKA, MEMBER, BOARD OF DIRECTORS, SHEE ATIKA, INC.

Mr. KITKA. My name is Herman Kitka. I am a member of the board of directors of Shee Atika, Inc. I have been a member since 1974, when Shee Atika was incorporated.

Attached to this statement is a copy of an affidavit of mine which sets forth my knowledge concerning the subsistent activities of the Natives of Angoon, in and around Cube Cove and lands which we received on North Admiralty Island pursuant to the Settlement Act.

Based on my knowledge, there will be no adverse impact of any consequence on the subsistence activities of the natives of Angoon by our proposed activities at Cube Cove and on our lands on the island.

For example, there are no spawning streams at Cube Cove, and that area is not a commercial fishing area, as Silver Bay outside Sitka is. Yet Silver Bay, where there is a log transfer facility and log rafts and booms, is a major commercial fishing area, and the Northern Regional Agricultural Association even raises fish there.

I would also like to inform the committee that when we wanted to select land at Chiak Bay, the people of Angoon claimed that this was an important subsistence area. Then, when we suggested Hood Bay, the same was true. They said it was one of the most important subsistence areas.

Now they claim it is Cube Cove, because that is where we are. But Cube Cove is not and has not been an important subsistence area, and we will not adversely affect what subsistence uses they make of it.

I have read the various affidavits filed by residents of Angoon in the litigation about subsistence activities at Cube Cove and on our land. I have heard them speak on the matter at DEC or corps hearings.

Mr. Chairman, unfortunately, I must state that to the extent that those affidavits and statements are contrary to mine, I must disagree with what they say.

Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF HERMAN KITKA

My name is Herman Kitka, Sr., and I am a member of the Board of Directors of Shee Atika, Inc. I have been a member since 1974, when Shee Atika, Inc., was incorporated. Attached to this statement is a copy of an affidavit of mine which sets forth my knowledge concerning the subsistence activities of the Natives of Angoon in and around Cube Cove and on the lands which we received on North Admiralty Island pursuant to the Settlement Act. Based on my knowledge, there will be no adverse impacts of any consequence on the subsistence activities of the Natives of Angoon by our proposed activities at Cube Cove and on our lands on the Island.

For example, there are no spawing streams at Cube Cove, and that area is not a commercial fishing area, as Silver Bay outside Sitka is. Yet Silver Bay, where there is a log transfer facility and log rafts and booms, is a major commercial fishing area and the Northern Regional Aquaculture Association even raises fish there.

I would also like to inform the Committee that when we wanted to select land at Chiak Bay, the people of Angoon claimed this was an important subsistence area. Then, when we suggested Hood Bay, the same was true. They said it was one of the most important subsistence areas. Now they claim it is Cube Cove, because that is where we are. But Cube Cove is not and has not been an important subsistence area and we will not adversely affect what subsistence uses they make of it.

I have read the various affidavits filed by residents of Angoon in the litigation about subsistence activities at Cube Cove and on our land, and I have heard them speak on the matter at DEC or Corps hearings.

Mr. Chairman, unfortunately, I must state that, to the extent those affidavits and statements are contrary to mine, I must disagree with what they say.

State of Alaska)
) ss:
City of Sitka)

AFFIDAVIT OF

HERMAN KITKA, SR.

Herman Kitka, being duly sworn, deposes and states:

1. My name is Herman Kitka, Sr. I am 69 years old and I am a resident of Sitka, Alaska. I am on the Board of Directors of Shee Atika, Inc., and I have been on the Board since the corporation was formed in 1974.

2. I am a memeber of the Kogwanton clan of Tlingit Indians. I am also under the Eagle clan and my family crest is Brown Bear. I am also a member of the first organization that was formed in Southeastern Alaska by the Tlingit Indians and the title they adopted was Kogwanton. Nine clans of the Eagle clan joined together in this organization. Under this clan, we adopted an emblem and we called it the High Caste Killer Whale.

3. I have lived my entire life in Southeast Alaska and for many, many years I have been engaged in subsistence hunting and fishing in Southeast Alaska. The Tlingit Nation controlled all of Southeast Alaska at one time. Various areas were dominated by various groups. The Cube Cove area was

dominated by the Coho clan from Hoonah, not from Angoon. Later, the question of land use among Tlingit was settled, before my time, by the Alaska Native Brotherhood of Southeast Alaska. Traditional Tlingit boundary lines were done away with in favor of one claim for all of Southeast Alaska. All of the Southeast communities, including Angoon, agreed to this term.

4. I am personally familiar with the subsistence hunting areas of the Natives of Angoon. As a commercial fisherman, I lived among them in Sitkoh Bay, from 1935 until 1973. I did subsistence hunting with various groups from Angoon that were on the boat with me. The principal hunting area when I was with them was in the Hoonah Sound area.

5. Since 1973 I have continued to do subsistence hunting in the fall in the Hoonah area and every now and then I come across some of my friends from Angoon hunting in that area.

6. I also am aware of the subsistence fishing areas of the natives of Angoon. For halibut, they fish right outside Angoon, on the edge of Chatham Strait. For sockeye salmon, in the spring, they go to Sitkoh Bay and Basket Bay, which is located directly west and straight across Chatham Strait from Angoon. In the fall, they fish in the Chaik Bay area, mostly for chum salmon. They also fish for chum in Whitewater Bay. In the past, they took silver salmon from Kootznohoo Inlet. That is against the law now.

7. The seaweed relied on by Tlingits for subsistence grows only in areas that are influenced by ocean current and ocean swell and it is not found in areas such as Cube Cove. You will find seaweed in Chatham Strait only in a few places like for Morris Reef, Kelp Bay and Point Gardner.

8. In order to utilize halibut and salmon for subsistence, they need to be smoked. You need a cabin and a smokehouse if you are to lay away a big supply. I have never seen evidence of any smokehouse in the Cube Cove area. I was last in Cube Cove in November of 1982. I spent four days in the hills above the Cove. I am expert at calling deer. I was taught to do so by my grandfather because they used bows and arrows and you had to be able to call deer very close, because the bow and arrow would not shoot very far. I was unable to raise any deer in the four days I was hunting in the Cube Cove area. I also beachcombed while I was there and I never saw a deer on the beach anywhere. Neither did I see any hunters nor any boats during that time.

9. I was also there in July of 1982 when the Chatham Strait area outside Cube Cove was opened for the first time for commercial fishing. I was there from the middle of July to the middle of August. On occasion, after a day of fishing, I would anchor in Cube Cove and I never saw any indication of activity.

10. Cube Cove is approximately 35 miles from Angoon. It is not an important area for subsistence hunting or fishing by the people of Angoon. From the middle of June until early July the people of Angoon subsistence fish for sockeye with beach nets in Stikoh Bay and in Basket Bay. Both of these areas are directly across Chatham Strait from Angoon and much closer to Angoon than Cube Cove. From early July to September the people from Angoon fish commercially, or handtroll, in the Kootznoowoo Inlet area. The first portion of September the people from Angoon fish for early chum salmon in Chaik Bay using beach nets. They also seek silvers in Kootznoowoo Inlet. The people of Angoon also fish for halibut, crabs, clams, and other shellfish in Kootznoowoo Inlet throughout the year.

11. The people of Angoon who subsistence hunt do so primarily on the shores of their own Kootznoowoo Inlet and in the Hoonah Sound area on the Chichagof Island. The deer are on the beach from the end of October until the end of November. I am unaware of anyone from Angoon who subsistence hunts for deer in Cube Cove.

12. Cube Cove is not an important area for commercial fishermen either. For the past 15 years or so the vast majority of commercial fishing has taken place in the Pacific Ocean on the west side of Chichagof and Baranof Islands. Sitka Sound, Salisbury Sound and Katlian Bay are important areas also, and fishermen from Angoon, Juneau, Kake and even Petersburg use these

areas. The inland waters in Southeast Alaska are not as good for commercial fishing because they usually are not opened by the state until August, when most of the fish are already back in the streams. This has been the case for the last 15 years. Most of the commercial fishing which is done in North Chatham Strait occurs between Hawk Inlet and Square Cove, north of Cube Cove.

13. In my experience, the presence of log transfer facilities has not adversely affected fish. Silver Bay, outside Sitka, is one of the major commercial fishing areas, yet there are log rafts tied up there year round. Nor have I found that crabs are harmed by log transfer facilities. Hanus Bay and Poison Cove are major log storage areas and good crabbing areas. Indeed, I have seen Dungeness Crab living under bark which has washed down from streams and settled in the tide flats. Neither Cube Cove nor any part of the western shore of Admiralty Island contains a large population of King Crab. It is not a commercial crabbing area. The commercial crab fishermen use the Icy Strait, Pleasant Island, Hanus Reef and Port Frederick areas.

14. There is a cabin at Cube Cove, but that cabin was built for a white man who worked for the fishing industry. He was a watchman. You will find similar cabins throughout the Chatham Strait area wherever there previously was a fish trap site.

15. All Tlingits, including those who live in Sitka and Juneau, engage in subsistence living both because it is a part of our culture and because of need.

16. I have reviewed the various affidavits submitted by residents of Angoon and filed with the court and I disagree with many of the statements contained therein concerning subsistence activities at Cube Cove.

Herman Kitka, Sr.

SUBSCRIBED and SWORN to before me this 24th day of October, 1983.

Leona Williams
Notary Public in and for
the State of Alaska

My Commission Expires: 9/10/86

Senator MURKOWSKI. Thank you very much. Mr. Kitka.

The next witness is Mr. Roger Snippen. Mr. Snippen is president and chief executive officer of Shee Atika. We welcome you to the hearing, and we look forward to your testimony.

STATEMENT OF ROGER SNIPPEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SHEE ATIKA, INC.

Mr. SNIPPEN. Thank you, Senator Murkowski.

I have not prepared an organized dissertation pertaining to my submitted testimony. It is rather complicated and involved, and I am going to have to try to abbreviate it as much as possible to bring us to the current situation.

My testimony is going to be predominantly about the business aspects of the corporation and our extreme financial distress experienced to date.

I was hired by Shee Atika, Inc., in July 1982 and soon thereafter initiated efforts to develop the Admiralty Island properties as conveyed by ANILCA.

Upon coming to the corporation, my first efforts were to generate a line of credit and establish relationships with the banking community. It was soon thereafter that I became intimately aware that the Sierra Club had challenged the conveyance of the properties to Shee Atika.

It was during an interim period prior to my employment and after the preceding administration of the company had left that the Sierra Club had filed a lis pendens, and during this transitional period, the board was basically running the company themselves, acting as a management board for the corporation.

After putting the finance package together and approaching different banks, we finally were able to generate interest from about three different banking communities and, through negotiations, were able to obtain a commitment from the Travelers Insurance Companies for $20 million.

During the negotiations, it was found out that the lis pendens was on our property, and at that point the negotiations came to an abrupt halt.

It was obvious that the lands conveyed by Congress were being used as a tool, and the suit was being used as a weapon to preclude Shee Atika from securing capital for the development and ongoing continuing operations of the corporation.

The lis pendens, as far as I can see, is an issue which has raised considerable ethical questions from the initial standpoint that I do not see how the Sierra Club can be financially harmed, how they have a specific interest in the land, and still the lis pendens remains. Even after Congress reaffirmed our titles and our specific requests to remove the suit and the lis pendens, the issue still is a factor in our everyday life.

The corporation has gone forward from the beginning on borrowed funds. It initially established a drawdown line of credit to Sealaska Corp. Three weeks after my employment, we were informed that Sealaska could no longer honor that commitment. There was still approximately a quarter of a million dollars left in the drawdown line, but Sealaska was themselves finding that they had some difficulties, and they could not honor the commitments.

So, overnight, we found out that we were absolutely flat broke, no cash flow from the corporation, and no source of capital.

It was at that time that, through the efforts of our counsel, we were able to receive some of the land reimbursement expenses as mandated in the act. These were approximately $150,000, and we were able to keep the corporation afloat during an interim period of time.

It was soon after that that we found that we were again out of capital. At that time, one of our shareholders came forward with a personal, nonsecured $20,000 loan, with which we were able to keep the corporation afloat.

There have been questions as to the business prowess, the wisdom of the management's business decisions. Basically, about all I can answer to that is, we are unable to have a corporate plan for organized growth and stability by the fact that we do not have operating capital. The key to everything is capital. Without that capital, you cannot formulate an effective business plan.

The Sierra Club has been very effective and, I think, very deliberate in blocking all moves toward capital procurement with the lis pendens and suit to invalidate titles to the land.

It is a little frustrating when Congress declares its intent to convey to the natives a settlement for their aboriginal rights, and then the modern-day opportunists seek to question what Congress has done. They are trying to claim that Congress does not know what they did. But I have to remind them that the same act which created Shee Atika also created the monument; they were nonseparable; they are one and the same.

I believe Congress' intentions for the natives were for their economic development and well-being. And, to date, the natives of Sitka have not had any tangible benefits from the act according to Shee Atika's settlement.

With this, I believe that the time is very near. We are in desperate straits for capital, and unless something happens extremely shortly, we are going to be forced into a receivership position.

Thank you.

Senator MURKOWSKI. Thank you very much. I appreciate your statement and your efforts to bring it together in a concise manner.

Your entire statement will appear in the record.

[The statement and additional material follow. Testimony resumes on p. 70.]

November 1, 1983

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
Senate Hart Building H-83H
Washington, D.C. 20510

Dear Mr. Chairman:

In conformance with your notice of October 14, 1983, I would like to submit this document as written testimony for the record as pertaining to the hearing before the Senate Select Committee on Indian Affairs scheduled for November 2, 1983, in the matter regarding Shee Atika, Incorporated.

My name is Roger Snippen and I am the President and Chief Executive Officer of Shee Atika, Incorporated, an Alaska business corporation formed under the provisions of the Alaska Native Claims Settlement Act of 1971 ("ANCSA").

Shee Atika was incorporated in 1974. It has approximately 1,925 shareholders of Alaska Native descent of which 1,427 reside in Sitka, Alaska. Shee Atika does not share in the monetary provisions of ANCSA, and as such, has existed on borrowed funds to date. Since its incorporation, Shee Atika has not made any distributions to its shareholders and thus its shareholders have received no tangible benefits from the Act.

Under the terms of ANCSA, Shee Atika was to receive title to approximately 23,040 acres of land. In 1975 Shee Atika selected its land entitlement on Admiralty Island in the vicinity of Hood Bay. The Sierra Club challenged the validity of Shee Atika's selection in the United States District Court for the District of Alaska. Subsequently Shee Atika made an alternative selection in the area of North Admiralty near Cube Cove. Congress, by Section 506(c) of the Alaska National Interest Lands Conservation Act of December 2, 1980, P.L. 96-487 (ANILCA), directed these lands on Admiralty Island be conveyed to Shee Atika as part of its land entitlements. The Secretary of the Interior, acting through the Bureau of Land Management, on July 10, 1981, issued a decision to convey to Shee Atika the lands described in Section 506(c) of ANILCA.

The decision to issue an interim conveyance to Shee Atika was challenged, _inter alia_, by the Sierra Club in August 1981, by appeals to the Interior Board of Land Appeals and the Alaska Native Claims Appeal Board. The Secretary of the Interior, on November 3, 1981, assumed jurisdiction of the appeals and on December 4, 1981, entered a decision denying the same. The Secretary, by patent and interim conveyances, conveyed the lands described in Section 506(c) of ANILCA to Shee Atika on December 9, 1981. Subsequent to receiving the conveyance, Shee Atika recorded the conveyance documents in the Juneau Recording District.

The Sierra Club, on March 17, 1982, filed an action against the Secretary of the Interior and other federal officials in the United States District Court for the District of Columbia

(Civil Action No. 82-0700) seeking inter alia, a judgment that the conveyance issued by the Secretary of the Interior was unlawful, null and void. They also sought an order revoking and rescinding the conveyances and enjoining the Secretary from issuing a patent on the lands so described. The United States moved to dismiss the lawsuit for failure to join Shee Atika, an indispensable party in that Shee Atika held title to the land, or in the alternative, to transfer the lawsuit to Alaska where the Sierra Club could join Shee Atika as a party-defendant. The motion has been pending before the Court since September 1982. On June 23, 1982, the Sierra Club, acting through its agent, the Sierra Club Legal Defense Fund, Incorporated, filed a notice of lis pendens in the Juneau Recording District affecting the Section 506(c) lands. The lis pendens stated that there was pending in the United States District Court, an action seeking "to invalidate the interim conveyance of real property dated December 9, 1981, from defendant Watt to Shee Atika, Inc."

During my interview for the position of President and Chief Executive Officer, it was obvious that the corporation was in extreme financial difficulty. Current liabilities far exceeded current assets and there was no indication that any banking relationships had been developed. I soon found that the corporation, although founded in 1974, had existed solely on borrowed funds and that it was not until December of 1981 that they received the lands as provided by ANILCA. They had established a $2,500,000 line of credit with Sealaska

Corporation, who, although a competitor, was also a Native corporation formed under the provisions of the same Act as Shee Atika. Shee Atika, being an "urban" Native corporation, did not share in the monetary settlement of the Act and was given only $250,000 in start-up funds. That money was long since spent and the corporation was relying upon Sealaska for a source of capital. However, despite the unfavorable financial statements of the corporation, I felt that I could pull the corporation through the crisis and develop the needed banking relationships. My perceptions at the time of employment were that I had an advantage that my predecessors did not have in the recently-conveyed asset base comprised of prime timberlands. This asset base would enable me to provide the needed collateral to secure funding for the corporation.

Reviewing the data the Board of Directors provided, I found that Shee Atika had some $226,000 left in their draw-down line of credit with Sealaska. As a manager, it was intuitively obvious that this capital would be sufficient to enable us to carry the corporation a few weeks until a banking relationship could be established. However, it did not take long to realize that I was mistaken.

On or about August 16, 1982, Sealaska notified Shee Atika that they could not honor the line of credit previously committed. Although Sealaska indicated that they desired to honor the commitment, their bank would not allow the commitment to stand, as Sealaska was itself finding that they were in precarious financial condition. So the situation that developed some three weeks after accepting employment with Shee Atika was that we were flat broke. On August 19, the Shee Atika Lodge, financed by a Bureau of Indian Affairs loan guarantee and limited partnership contributions, had a limited partnership subscription coming due in the amount of $11,580. Our Chairman, in an emergency situation, deposited those funds to our corporate operating account. Then on September 28, 1982, our attorney was successful in obtaining reimbursements of $150,000 pursuant to the provisions of ANILCA. These funds were immediately used to pay specific sensitive accounts payable and we were able to retain some $60,000 in our operating account by letting other payable accrue.

Having completed a finance solicitation package on August 6, 1982, I had immediately contacted representatives of the finance community in an attempt to generate a line of credit and loan for the corporation. Several banks in the Seattle area turned us down because they could not effectively service an Alaskan loan. Several others expressed interest if a participating Alaskan bank could be found. On August 19, I mailed a package to Travelers Insurance. Discussions with several lenders, including the Federal Land Bank, Commercial Fisheries and Agriculture Bank and Travelers continued through the fall. Most banks were cautious because of three basic factors: Shee Atika had no history of a positive cash flow; the reputation of Alaska Native corporations was not favorable in the banking community, and Shee Atika had a new Chief Executive and the banks did not know where he was taking the company.

However, through ongoing negotiations we were able to generate a sincere interest on the part of Travelers Insurance Companies and eventually came to a tentative agreement of terms. It was at this time that I ordered a Preliminary Commitment for title Insurance and was informed upon receipt of this document, on November 5, 1982, that the Sierra Club had filed a lis pendens on our titles. Although Travelers was convinced, as we were, that the lawsuit was non-meritorious, the existence of the lis pendens prevented Travelers from being able to make the loan. Discussions with the other financial entities met with a similar fate because of the lis pendens.

By letter of November 16, 1982, the Travelers Insurance Companies informed Shee Atika that its application for a $20,000,000 debt consolidation and capital development loan, to be secured by a deed of trust on the lands conveyed to Shee Atika could not be favorably acted on because of the lis pendens filed by the Sierra Club.

To expeditiously clear the slander to its title caused by the Sierra Club filing, Shee Atika sought from Congress confirmation to the title conveyed pursuant to Section 506(c) of ANILCA. By Section 315 of P.L. 97-394, Congress confirmed in all respects the title conveyed to Shee Atika. Through our attorneys on January 7, 1983, Shee Atika informed the Sierra Club that there was no basis for the lis pendens in light of section 315 and that the continued presence of the lis pendens was causing Shee Atika to suffer continuing damages. We requested that the lis pendens be promptly removed but the Sierra Club refused. As a result of the continued presence of the lis pendens, Shee Atika continues to be very substantially harmed.

The lis pendens precludes Shee Atika from securing financing that will permit it to pay off its substantial debt obligation. At the present time, Shee Atika has outstanding approximately $6,500,000 in debt, and this debt carries an average annual interest cost of some 18.6 percent. If the lis pendens were not present, Travelers Insurance Company may honor previously-negotiated loan terms. (By letter of October 21, 1983, Travelers informed me "the Travelers continues to be interested in consummating a loan to Shee Atika. As . . . indicated in . . . [the] letter of November 16, 1982 to you, we cannot fund a loan until you can provide insurable title, including clearing the cloud of the Sierra Club litigation.") Shee Atika, upon receiving the loan, would retire immediately its outstanding debt and thus save approximately 4.85 percent interest per annum, representing a cash savings of $291,000 per year, or $24,250 a month. Every day that passes without Shee Atika being able to receive financing because of the lis pendens causes Shee Atika a loss of money and increases the risk of involuntary receivership.

The lis pendens has also precluded Shee Atika from entering into joint ventures that would provide loan guarantees that would permit Shee Atika to seek alternate forms of financing its current debt and its future operations. For example, at least three companies have refused to enter into joint ventures, informing us that they have been told by their bankers that it would not be advisable for them to guarantee a loan to cover current debt and current operating capital needs of Shee Atika by virtue of the cloud on title. In addition, it has precluded Shee Atika from entering into a joint venture that would not include loan guarantees for past debt obligations, but would only provide guarantees for needed current working capital, and has made it impossible for Shee Atika to negotiate in connection with the proposed development of its timber properties except in a position of weakness. The lis pendens has also precluded Shee Atika from securing financing to allow us to even plan the development of non-timber properties of Alice and Charcoal Islands which are soon to be conveyed under the provisions of ANILCA.

The $60,000 of funds remaining from the $150,000 in reimbursements previously mentioned were enough that by extremely careful management, I was able to stretch them to cover minimal expenses of the next six months. However, at the beginning of April 1983, we again found ourselves in a position without funds. I was able to make payment of my secretary's salary and that of my other staff members, but deferred my own salary and retained the IRS payroll tax deposit for use as payment of salaries on April 15, 1983. This action, of course, forced late payment penalties when the tax deposit was eventually made at the end of April, but it also kept us from insolvency for two more weeks and allowed more time to generate alternative funding. In mid-April, 1983, one of our shareholders made an unsecured $20,000 loan to the corporation and these funds kept us alive until May 19, 1983 when we were able to secure a $100,000 short-term note from the B.M. Behrends Bank of Juneau. This note is secured by the small amount of property which Shee Atika owns at Katlian Bay, until then its only unencumbered asset. This note falls due on November 19, 1983, and if not met we could face the loss of property through foreclosure and sale.

During the interim we were lapsing behind in the mortgage payment on our hotel and could not meet the December 1982 and January 1983 mortgage payments, which fell in arrears some 48 days. At 60 days we would have triggered foreclosure, and were served notice to that effect by Dollar Savings and Loan, the holder of the mortgage. To meet the mortgage payment I was able to negotiate two years of prepaid rents from Alaska Federal Savings and Loan, which has an office in our hotel building. The rents were discounted 16 percent and we also had to give price increase concessions. However, through this move, we were able to retain the hotel and avoid foreclosure.

Then on March 1, 1983, Shee Atika was again unable to make its hotel mortgage payment. However, hotel-generated cash flows enabled us to make the mortgage payment on March 28, but other hotel creditor payments were temporarily deferred. Shee

Atika has retained the Vance Corporation to manage the Shee Atika Lodge. Shee Atika has not been able to pay the Vance Corporation its management fee because of its inability to secure financing, and if this situation continues, the Vance Corporation will cease management and this may result in closing of the hotel. With a corporate finance package or revenues generated from logging, we could avoid these perilous situations.

Later this spring, we received additional reimbursement funds under ANILCA, but those were used to pay off critical creditors.

At this writing, the $175,000 second mortgage on the hotel is due and I am attempting to negotiate an extension. These negotiations are entered from posture of weakness in that we do not have funds to pay the mortgage reduction called for in the loan agreement.

Shee Atika has incurred substantial legal fees and consulting fees and continues to incur such fees and related expenses in an effort to secure financing because of the existence of the lis pendens and other Sierra Club actions. Shee Atika is unable to pay the fees nor the associated expenses.

As President and Chief Executive Officer of Shee Atika, I have expended over the past 12 months approximately 90 percent of my time in efforts to secure financing and addressing litigative issues brought on by the Sierra Club. This expenditure of time and incurred associated out-of-pocket costs were directly caused by the activities of the Sierra Club. But for the Sierra Club, my time would have been spent productively. Shee Atika has absolutely no operating funds, and therefore is forced to seek expensive, short-term loans.

The Sierra Club actions have caused us extensive hardships to date and no let-up in their onslaught is in sight. Through this past year we have been forced to seek alternative financing at every turn of business and, in fact, have been unable to operate the corporation as a going concern or in any sense of a businesslike manner.

In an effort to generate a positive cash flow through development of our resources, one finds that there are a couple of basic fundamentals which must be addressed. First is the fact that we need operating capital to provide the necessary "seed" to pay an operator to initiate logging. We also need an operator to do the logging. As the underlying basic operating capital was nonexistent, we were forced to seek alternative means to finance the operation. Among the considerations we addressed for alternatives to conventional bank financing were venture agreements and stumpage sales. As the lis pendens was clouding titles to our lands, we found that stumpage sales were out of the question, as we could not give purchasers clear title to the timber. In addition, because we were negotiating from a position of weakness, we were unsuccessful in arriving at an equitable venture agreement. This was a direct result of the lis pendens.

A second option was to solicit advance funding from various marketing firms who were interested in selling logs for the corporation. This effort was also quite unsuccessful as the Sierra Club litigation created doubt as to the timing of deliveries of logs and, as such, we could not commit to any specific log delivery date. Negotiations with Weyerhauser, ITT Rayonier, Burlington Northern, Sealaska Timber Company, Louisiana Pacific, and others all broke down when the discussion of cash advances was reached.

Because of the Sierra Club litigation, it was imperative that some kind of a logger or marketing agent source of funds be secured as the banks could not consider us in light of the consistent litigation and clouded titles. Moreover, because operating capital is a paramount factor in survival for the corporation, the basic decisions relating to selection of a logger and marketing agent had to be evaluated considering the financing parameters, and until finance considerations could be solved, the subsequent selections could not be made. This factor alone caused considerable hardship and embarrassment for us in the fact that most businesses would not consider us a serious entity knowing that we desperately needed capital.

In an effort to circumvent the effects of the lis pendens and our inability to attract operating capital, I contracted with Klakwan, Inc., to initiate harvesting at Cube Cove. The operation was started on November 17, 1982. Upon a motion for a Temporary Restraining Order by the Sierra Club, the operation was halted on November 19, 1982. The Sierra Club, among other things, claimed that the Department of Environmental

Conservation did not have enough information to permit the activity. After extensive delays caused by the Sierra Club, an adjudicatory hearing was held in late March 1983. After extensive testimony the DEC Hearings Officer found:

> "In conclusion, the evidence clearly shows that (a) Cube Cove is not an important or critical subsistence resource area; (b) Cube Cove is not an important or frequently-used subsistence area for Angoon Natives; (c) there is no creditable evidence that installation and use of the proposed LTF will adversely impact recognized subsistence use; and (d) there is no evidence that respondent is unwilling to recognize or cooperate in assuring opportunities for the subsistence use of the Cube Cove area and its resources." (Page 33)
>
> "Simply put, after a year of procedure and litigation, Requestors [Sierra Club and Angoon] have presented little, if any, substantive evidence to support their claim which was not already extant at the time of certification. They have not carried either the burden or standard of proof in these proceedings." (Page 40)

Recurring phrases such as "Again, as a matter of evidentiary procedure, Requestors fail to meet the burden of and standard proof required," continuously show up in the findings of the Hearing Officer.

In addition, in commenting on the proposed log transfer facility at Cube Cove, the Hearing Officer stated:

> "I would note at this time that we are reviewing in detail a facility which has proven to be very well designed, with attention focused on the creation of an impact-free operation wherever reasonably possible. The evidence demonstrates that this facility may very well be far superior environmentally to any other currently operating in Southeast Alaska. That the facility is located in an area deemed a national monument has lent great fervor to these proceedings, but this should not tempt us to judge in a selective manner or ignore the positive values and technology

> being implemented by the proposal. In relative terms, the evidence indicates that we are dealing with a superior design which may well serve as a model for other facilities that may be testing the standards in more appreciative ways." (Page 24)

On August 8, 1983, Commissioner Neve of the DEC ratified the findings and recommendations of the Hearing Officer. Because the Sierra Club's goal is nothing but harassment, however, on September 2, 1983, they appealed the decision.

However, finding that the Sierra Club had succeeded in enjoining our initial development effort and knowing of their stalling tactics, I immediately looked to another alternative which would allow us to remove timber during the 1983 operating season. This option was helicopter logging, whereby the logs would not have to flow through a developed log transfer facility. Although extremely expensive and uneconomical as compared to conventional transfer methods, the survival of the corporation depended upon it. Therefore, anticipating that revenues from the operations would pay for initial harvesting costs, Silver Bay Logging agreed to perform falling and bucking operations for us. This work started June 17, 1983. During July 1983, the Sierra Club was successful in obtaining an injunction against the helicopter log transfer operation. As the helicopter firm, Erickson Aircrane, needed lead time for the logistics of mobilization into the area and also insisted on a guaranteed 25 days of work, we, of course, could not finalize the contract while the injunction was in place. However, given the fact that a falling lead of some 4 MMBF was required to match logistical needs of the helicopter operation, we could not afford to halt timber falling operations because in the event that the injunction was lifted, it would have been virtually impossible to gain the required lead in felled and bucked log inventory which the helicopter needed to schedule operations for 1983. Therefore, despite the injunctive order, we were forced to continue cutting or face losing the chance to develop a positive cash flow in 1983. Finally, on August 14, 1983, the injunction was lifted and we put in motion efforts to finalize the logging contract. However, because of the postponement caused by the injunction, Erickson could not guarantee that they could now fit us into their schedule. Finally, during mid-September, Erickson found that they could fit our operation into their schedule for the period of time from October 3 through 15. This, of course, would be insufficient time to generate a complete cargo for the export market and the associated logistics required for the operation would render a partial shipment uneconomical. On September 24th, it was decided that given the short time available for the helicopter and the inclement weather projected for October, it would not be prudent from a point of safety or economy to conduct the operation this fall. Therefore, helicopter operations were forced to be deferred until the spring and summer of 1984. However, the necessary decision to forgo a current helicopter operation also greatly impacts the anticipated value of the felled and bucked timber which must be carried through the winter and spring. This is because of deterioration that will result of a lower quality product offered for sale. Mr. Les Zilmer of Dwyer Overseas, our marketing agent, reflects an anticipated log devaluation of some $700,000 by carrying the current log inventory through spring of 1984. It is exceedingly unlikely now that these logs could be removed by helicopter and generate a positive cash flow for the corporation.

The Sierra Club representatives testifying before this Committee will undoubtedly state that their concerns are strictly environmental and shall use a lot of chic words such as "unique," "pristine," and "untouched." However, it is painfully obvious that their efforts are a deliberate and calculated attempt to keep the Natives of Sitka from realizing their rights and benefits of the Settlement Act. It is the publicly stated position of the Sierra Club that they want Shee Atika off Admiralty; that they do not care if Shee Atika cuts timber, just so we "don't do it on Admiralty." Every permit that we have applied for has been challenged by the Sierra Club or their allies. To date, the resolution of all their appeals, both administrative and judicial, have been in favor of Shee Atika or the agency they are challenging.

I have projected in the past that certain Sierra Club actions would ensue. These projected actions have materialized. I will now also project that should the Army Corps of Engineers Environmental Impact Statement being prepared in regard to the log transfer facility at Cube Cove be in favor of the development of the facility, that it will also be appealed by the Sierra

Club. If they are true to form, their accusations will lack substance and will be full of innuendos such as "could," "might," "can," and "perhaps." Their accusations will be painfully lacking in fact and substantiating data. But through such efforts they will undoubtedly be able to stall development even longer. They will show a complete disregard for ethical conduct and shall also demonstrate a complete irreverence of truth. Their strategies are and generally always have been one of STALLING! In virtually every instance of litigation and appeal they wait until the final day or days of the appeal period (normally 30 days) to file their appeal, but first they will ask for an extension of time to allow them to "fully develop" a position paper and to provide "meaningful" input. Normally they are granted an extension of time and after an additional 15 to 30 days they manage to file a document which has little or no factual data, but that is full of cliches which generate hostilities rather than provide answers. Their attacks are deliberate and calculated in an effort to use up as much calendar time as is absolutely feasible, knowing that time is very costly to their adversaries. In addition, they will usually attack the agencies rather than Shee Atika, in that as a "public interest" group they are "just protecting the interests of the public." By so doing they are seldom required to post bonds for their actions.

Recently we have sought out several banks to participate in an application for a Bureau of Indian Affairs guaranteed loan. To date, two banks showed absolutely no interest because of the lis pendens and another three, after consideration, and who appeared interested, rejected participation. Our only recourse, it appears at this time, is to seek a direct BIA loan, to fund operations, but we have no way of knowing if we will be successful.

The filing of a lis pendens on our tiles by the Sierra Club was obviously malicious in nature for it serves no effective purpose other than to block prospective financing for Shee Atika by prohibiting the use of our Admiralty properties for loan collateral. The Sierra Club has no financial interest in the property and cannot face any irreparable harm should the property be logged. The Sierra Club has supported previously logged areas to be included in wilderness study areas and advocated the inclusion of logged area for wilderness classification in the RARE II program. In addition, it is a known and documented fact that many areas of the current Admiralty Island National Monument were previously logged. This also includes the area of Cube Cove where the proposed log transfer is to be built: the same area that the Sierra Club is claiming to be "unique," "pristine" and "untouched."

Our efforts to get the Sierra Club to remove the lis pendens after Congress reaffirmed our titles in Section 315 of P.L. 394 in December of 1982 was met with no response by the Sierra Club. Nonetheless, in the ensuing court battles, both in State Superior Court and U.S. District Court, not once has the

Sierra Club claimed that we should not be permitted to conduct operations because we did not own the timber, but rather that the proposed activity will "degrade the environment and cause irreparable environmental harm." I feel that it is time that the Sierra Club be held responsible for their actions and that they should not be allowed to hide behind the title of a public interest group. It is painfully evident that they are not a public interest group but rather that they are a special interest group and should be awarded no special treatment other than that of a special interest group. The deliberate and calculated efforts of the Sierra Club to force Shee Atika into receivership is further testified to by a statement of Mr. Sterling Bolima, an employee of Kootznoowoo, who in October 1982 stated that "they [referring to himself and the Sierra Club] would keep us in court for 20 years," and that "You will never cut a tree on Admiralty Island." He also stated that "Dr. Wayburn [of the Sierra Club] has a special interest in Admiralty and he is putting a lot of his own money in the fight to stop you," and that "we [Sierra Club] have a lot of help in this issue including 'Rockefeller and Sieberling.'"

Sometime in early 1983, after Congress confirmed our title, the Sierra Club Legal Defense Fund, Inc., sent the attached letter as a general mailing, soliciting funds to maintain its litigation against Shee Atika, Inc. The letter, in my opinion, solicits money under false pretenses, by misrepresentation. (A copy of the letter is attached as

Attachment A.)* The reference to National Monument in the title is misleading because it infers that the activities in question are on Federal (i.e., National Monument) land. In fact, the activities are occurring on Shee Atika's own land.

The next misrepresentation relates to the assertion that we are a logging firm. Shee Atika is a Native corporation with a timber base and will have our timber harvested after we conclude the barrage of litigation brought by the Sierra Club and others to deny our Settlement Act entitlements. I feel it must be a misrepresentation, designed to mislead those who are solicited, not to inform them that the "logging firm" is a Native corporation. In addition to knowing this, the author of the letter also knows that we secured no funds under the Settlement Act and have existed on borrowed funds since our incorporation. He also knows, since he is the lawyer in charge of the Sierra club litigation, that but for the patience and understanding of our creditors, we would be in bankruptcy court. We are hardly a "logging firm" yet. If I were either a member of the general public or even the Sierra Club, I would want to know if the funds that were solicited were to sustain litigation against a Native Settlement Act corporation or a "logging firm" such as Weyerhauser. Obviously, the author of the letter did not want the truth to be known because it could and undoubtedly would, affect his solicitation. Thus, he misled by not giving an accurate representation of the nature of the "logging firm."

* To avoid duplication, a copy of this letter is printed following the prepared statement of Richard Anthony Baenen.

Another misrepresentation relates to the assertion that "Admiralty Island stood virtually undisturbed since the end of the last Ice Age," and claims that Admiralty has a "totally natural ecosystem." There has been logging on Admiralty Island. Areas were cut as early as 1860 (see Alaska Geographic magazine, Volume 1, No. 3, Summer 1973, "Admiralty . . . Island in Contention," page 18; hereafter referred to as Alaska Geographic). There has been logging at Hood Bay and White Water Bay (Alaska Geographic, p. 18). There has been, in fact, logging on Admiralty Island in the following years, in different locations:

Year	Number of Locations	Year	Number of Locations	Year	Number of Locations
1850	2	1919	5	1952	1
1860	1	1920	2	1957	1
1880	2	1923	1	1959	2
1911	5	1924	3	1960	1
1912	1	1925	3	1961	1
1913	4	1926	2	1962	1
1914	13	1927	2	1964	2
1915	4	1928	3	1965	2
1916	3	1930	1	1966	2
1917	2	1942	1	1971	2
1918	2	1947	2		

(Source: Alaska Geographic pp. 40-41)

In addition, there were fish canneries on the Island. For example, in 1907 the Tyee Whaling Company established a plant at Tyee to turn whale carcasses into oil and fertilizer, and a salmon cannery also was located there, closing in the late 1950's (Alaska Geographic, p. 47).

There has also been mining on the Island, such as that done at the Pekovitch Mine on Funter Bay (Alaska Geographic, p. 68) and there will be mining on the Island in the future by those holding valid mining claims, such as Noranda (see section 504 of P.L. 96-487).

According to my count, there are at least 29 located mineral deposits (claimed and subject to development if there has been compliance with the mineral laws) on the Island (Alaska Geographic, pp. 40-41).

A settlement of over 400 individuals is located at Angoon. I doubt if reasonable men can differ that, in light of these statistics, it was not misleading to state as a fact supporting the solicitation that "Admiralty Island stood virtually undisturbed since the end of the last Ice Age."

The solicitation (page 2, paragraph 6) says a "large" portion of Admiralty Island will be lost. This is grossly inaccurate. Our 23,000 acres comprises less than 2 percent of the total Admiralty Island land. This 23,000 acres was not "lost," but rather conveyed to Shee Atika on satisfaction of its aboriginal land claims.

The letter also states Shee Atika plans to "clear the shores at Cube Cove on Western Admiralty Island." In fact, Cube Cove has approximately 2 miles of shoreline. The plan submitted to the State Department of Environmental Conservation for the proposed log transfer facility shows that, at the maximum, less than 1,000 feet of the shoreline of the Cove will be "cleared."

The author was quite aware of this when he sent out the solicitation, because he actively opposes the submitted plan.

Next, the "scientific studies" referred to, are disputed by experts of CH_2M Hill, retained by Shee Atika to study the effects of the proposed facility of the Cove. It is misleading to state as a fact that the "commissioned" studies showed the unqualified conclusions stated in the letter. The Sierra Club's own witnesses who conducted the "studies" testified that they were not scientific studies, but only a few "observations." Most of his testimony in areas in which he had any expertise did not support the Sierra Club's allegations, but rather supported the CH_2M Hill scientists' findings that the proposed facility would not have adverse environmental impacts. The Sierra Club's conclusions have been challenged in a hearing before the State Department of Environmental Conservation and found to be wanting in content and credibility.

Next, the letter asserts that the Sierra Club "immediately filed an action to contest the logging operation and to insure enforcement of the strict land management requirements of the Alaska Lands Act." This statement is misleading in several respects. First, in order to construct a log transfer facility, Shee Atika needed to secure, among other things, certain state and federal permits. One of these was a Certificate of Reasonable Assurance from the State of Alaska's Department of Environmental Conservation (DEC) that the proposed facility would be in compliance with the state water quality laws. That was received from the state in March 1982. The Sierra Club Legal Defense Fund did not "immediately file a lawsuit to contest logging operations" because none was taking place. It demanded, as it is entitled to, a hearing (trial) on the issuance of the Certificate. That hearing was held in March, 1983.

What transpired was simply this. After receiving the required state certificates, Shee Atika received from the Corps of Engineers a permit allowing it to construct the log transfer facility. The Sierra Club requested DEC to withdraw its certificate pending the hearing. DEC refused to do so. Pending the trial, Shee Atika, possessing all valid permits, started cutting trees in order to clear an area to be used as a log sorting and storage area that would be used in conjunction with the log transfer facility. The Sierra Club asked DEC to stop Shee Atika from clearing the sort yard. The DEC said it had no authority to do so, since DEC's authority extended only to the transfer facility and not the sort yard. The Sierra Club then sued DEC in state court, not Shee Atika, as implied. The state court granted a temporary restraining order, then held that the sort yard was part of the log transfer facility and therefore subject to DEC's regulations. DEC ultimately found that the temporary restraining order was improper.

Shee Atika also has been in compliance with the provisions of the "Alaska Lands Act" and at no time, prior or subsequent to the cutting for the sort yard, has the Sierra Club

Legal Defense Fund ever sued Shee Atika on the grounds Shee Atika was not complying with the "Alaska Lands Act."

Finally, the logging plan is not "destructive" but one found in advance to be in compliance with all applicable state laws, including the state's Forest Practices Management Act. Shee Atika, prior to starting work on the sort yard, submitted its planned operations to the Forestry Division of the Alaska Department of Natural Resources. Fish and Game personnel made a field investigation, found no problems and Shee Atika was permitted to proceed. The Sierra Club contested the operation initially, but last summer sought to dismiss the case.

It must be noted that the author of the solicitation is intimately familiar with the true facts, since he has been heading the litigation efforts of the Sierra Club against Shee Atika. He knows all of the facts. Yet he has intentionally misled the public in an effort to raise funds by misrepresenting facts and by omitting material and relevant facts.

The most crucial issue currently facing Shee Atika is financing. The lis pendens filed by the Sierra Club, by precluding financing, has the effect of slandering Shee Atika's credit rating generally and has precluded Shee Atika from securing short-term and long-term financing and from paying any of its creditors. Unless the lis pendens is removed immediately, or alternative financing is found, Shee Atika will face foreclosure on its hotel properly, loss of its Katlian Bay property which it had to mortgage as security for a short-term loan necessary to meet immediate payroll obligations and keep the office open, closure of its doors, foreclosure by its major creditors on their security interests in Shee Atika's Admiralty Island property, default on payment of its unsecured creditors who have no security recourse, and bankruptcy.

Several times the Sierra Club and representatives of Angoon have claimed that Shee Atika is "crying wolf" in its repeated statements of pending financial disaster and bankruptcy for the corporation. We have been lucky to date. We have received some reimbursement funds under ANILCA at crucial moments, we received loans from Board members, CH_2M Hill and our attorneys continue to represent us without being paid, we were able to mortgage our Katlian Bay properties. But I fear the end is near, and so do our auditors. Deloitte, Haskins & Sells reinforces our claims by the following excerpts from our 1982 Consolidated financial statements, prepared September 21, 1983, Footnote 1:

> ". . . The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The financial statements do not include any adjustments relating to the recoverability and classification of liabilities in the normal course of business. The financial statements do not include any adjustments relating to the recoverability and classification of liabilities that might be necessary should the Company be unable to continue in existence.
>
> "As shown in the accompanying financial statements at December 31, 1982, the Company's current liabilities exceeded its current assets by $4,810,125. . . . several of its primary creditors have agreed to perform additional services on a deferred payment basis and

> such accrued liabilities have continued to increase since December 31, 1982. Future operations of Shee Atika are dependent upon obtaining financing to develop and harvest its substantial timber holdings. The Company has exhaustively explored financing alternatives but lenders have been unwilling to extend credit as long as the status of Shee Atika's title to its timber properties is uncertain. Although the Company has been successful in obtaining some financing on an interim basis, these funds in themselves are not sufficient to meet the Company's current needs. The Company has not been able to generate cash from current logging operations as litigation has at least temporarily stopped it from building a vital log transfer facility. Finally, the Company is negotiating a settlement on a long-term note obligation where it may be liable for up to an additional $520,000 of disputed interest. These and other conditions indicate the Company may be unable to continue as a going concern."

The critical financial condition of Shee Atika is the explicit and direct result of the Sierra Club's extensive persecution of the Corporation. In many respects, the activities of the Sierra Club are not unlike the activities of the ruthless fur companies and unscrupulous land agents of years gone by, who, when Congress enacted legislation to help the Natives, were there to circumvent the intent of Congress for the satisfaction of their own greed and personal financial enhancement. Years ago the issues now before us would have been settled expeditiously by the law of the land. Today, more "civilized" means are used; the law of the paper chase. I feel that the settlement the Natives of Sitka received from ANCSA and ANILCA is a settlement of constant litigative harassment and a deliberate misuse of the judicial system which was designed to protect all parties to an issue. Where is, and what is, the settlement for the Natives of Sitka?

Thank you for this opportunity to address the Committee.

Sincerely,

S/

Roger D. Snippen
President
Chief Executive Officer
Shee Atika, Incorporated

Enclosure

SHEE ATIKA, INCORPORATED

P.O. BOX 1949
SITKA, ALASKA 99835
PHONE (907) 747-3539
or 747-3534

November 11, 1983

Mr. Edward Gamble, Mayor
City of Angoon
Box 189
Angoon, Alaska 99820

Dear Mr. Gamble:

In response to Senator Murkowski's comments during the hearings of the Senate Select Committee on Indian Affairs of November 2 and 3, 1983, I am writing to reaffirm Shee Atika's desire to work with the City of Angoon and the Sierra Club to develop mutually acceptable guidelines to mitigate impacts (if any) on Angoon's subsistence lifestyle.

It is our understanding that Angoon perceives the development of a log transfer facility at Cube Cove as a threat to their subsistence lifestyle. As stated in my letter of October 4, 1982, to Mr. Ivan Gamble of Kootznoowoo, Shee Atika is willing and would welcome an opportunity to discuss these issues with representatives of Angoon. Shee Atika is very distressed regarding the split involving natives of our two communities and would welcome you to Sitka for productive dialogue.

May I suggest that as ferries or other transportation permits, Angoon and Shee Atika each appoint four representatives to meet at the Shee Atika office at 2:00 P.M. Thursday, December 1, 1983.

I will anxiously await your reply.

Sincerely,

Roger D. Snippen
President & CEO

cc: Shee Atika Board

b.cc Honorable Frank Murkowski
ATTN: JERRY REICHLIN to SELECT COMMITTEE ON INDIAN AFFAIRS

Senator MURKOWSKI. The next witness, I believe, will be Vic Kaczynski. It is a pleasure to welcome another Irishman to the committee.

But before I call on you, in view of the fact that Senator Stevens has joined us, I hope that you will be kind enough to allow me to come back to you after Senator Stevens has addressed the Select Committee on Indian Affairs on the Shee Atika matter. I believe you have a few observations, Senator.

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator STEVENS. Senator Murkowski, I congratulate you for holding the hearing. I hope that it will develop a record that will give us an indication of where we might go and how we might bring about the compliance that Congress thought it would have.

On at least two occasions, maybe more, we have tried to clarify the intent of the original law in dealing with this subject. I am really at a loss to know how to sort of terminate the skirmishes that are going on and get down to a final settlement as far as this area is concerned so that these people can enjoy the benefits of the settlement that was made at the time we passed the original act.

I am sorry, I do have another meeting going on, and I have come over to be here and let you know that I do approve of the concept of having a hearing and getting the record established and seeing if we can get some advice. I would be particularly interested in advice that would come from the lawyers involved as to what we might do to see to it that the intent of the Congress in the Native Land Claims Settlement Act is finally carried out.

I thank you for allowing me to be here.

Senator MURKOWSKI. Thank you very much, Senator Stevens. We appreciate your remarks and your continued interest in this matter which began a long time before I arrived.

With that, we will proceed with the next witness, Dr. Kaczynski.

STATEMENT OF DR. VIC KACZYNSKI, CH$_2$M HILL, CONSULTANT TO SHEE ATIKA, INC.

Dr. KACZYNSKI. Thank you, Senator.

I would like just to summarize the important points in my testimony and make reference to them, and you can ask any questions you would like on that.

First and most important, the environmental issues here in the proposed project by Shee Atika have been studied intensively. I wish to assure you that this is a relatively clean operation that they have proposed.

Second, I wish to assure you and also any native people that might potentially be involved here that their subsistence activities and their opportunities for subsistence will not be adversely affected by this project.

Third, the environmental issues here have been blown all out of proportion to what is really going on.

Fourth, Shee Atika has not been treated equitably by the regulatory agencies involved. They have been treated unfairly, and this has come about by legal instigation by the Sierra Club and by lobbying by them within the regulatory agencies.

And, finally, something I did not put into writing, and this is something that I think should come out: The Shee Atika people are people, and as people, they have been stressed emotionally, and there are a lot of scars there for these people. I just want the people-recognition aspect of this not to be forgotten.

That is basically a summary of the points that I make in my written testimony.

Senator MURKOWSKI. You have about 3 more minutes if you want to expand on any of them.

Dr. KACZYNSKI. That is OK, sir.

Senator MURKOWSKI. I believe you used the terminology "relatively clean."

Dr. KACZYNSKI. Yes, sir.

Senator MURKOWSKI. What does that mean? Now, you are an environmental consultant, and I assume that we have your resume.

Dr. KACZYNSKI. Yes, sir, you do.

Senator MURKOWSKI. All right.

Why don't you tell us about your qualifications and respond to my comment concerning environmentally clean?

Dr. KACZYNSKI. All right, sir.

I hold a doctorate from Cornell University in limnology. I was on the faculty of the University of Washington in biological oceanography.

I have been a consultant for the last 11 years. I am presently director of environmental sciences for CH_2M Hill, one of the leading companies in the Nation in terms of environmental awareness and cleanup operations.

Senator MURKOWSKI. Are you retained by Shee Atika?

Dr. KACZYNSKI. Our company was retained by Shee Atika. I am the project manager for all of these environmental studies that have been going on for Shee Atika.

Senator MURKOWSKI. What does your professional definition, relatively environmentally clean, mean to a layman?

Dr. KACZYNSKI. That there will not be significant environmental harm from this operation. You cannot go out there and build a log deck and build a small breakwater and do logging without doing something.

This has been studied. There have been a lot of mitigation issues proposed in there by us in working it out with Shee Atika. Shee Atika has accepted these in a very professional manner. It is a good, solid, clean operation.

Senator MURKOWSKI. Have you had an opportunity to view other similar logging operations in southeastern Alaska? Recognizing that this one is proposed, as compared to those that are in existence, could you draw any conclusion?

Dr. KACZYNSKI. The one that is proposed, sir, is absolutely the cleanest thing southeast Alaska will ever see. It will stand as a model for all future log deck operations.

Senator MURKOWSKI. Is it so costly that other logging operations might not be able to afford that kind of log dump arrangement?

Dr. Kaczynski. No, sir, it is not. It is just basically some basic features of cleanliness and manageability and what you do with your runoff water.

[The statement and accompanying material follow. Testimony resumes on p. 132.]

PREPARED
STATEMENT OF
V.W., KACZYNSKI
TO THE SELECT COMMITTEE ON INDIAN AFFAIRS,
OVERSIGHT HEARINGS OF NOVEMBER 2, 1983

My name is Vic Kaczynski and I am a fisheries biologist employed by CH_2M Hill. My firm was retained by Shee Atika, Inc., to conduct certain studies relating to a proposed log transfer facility at Cube Cove, on Admiralty Island, as well as the proposed logging operations Shee Atika would conduct on its private lands.

A summary of some of those studies and their respective findings is appended as attachment "A" to my statement. In addition, I have made available to the staff of the Committee copies of the following studies:

1. Cube Cove and Vicinity: Baseline Ecological Field Studies (September 1982)
2. Cube Cove Oceanographic Study (September 1982)
3. The Marine Benthic Infauna of Cube Cove (September 1983)
4. Existing and Potential Opportunities for Traditional Marine Subsistence Activities in Cube Cove, Admiralty Island (August 1983)
5. Wildlife Impact Assessment for Proposed Log Transfer Facility and Logging Operations for Shee Atika lands, Admiralty Island (October 1983)
6. Assessment of Potential Impacts on Subsistence Use from Proposed Log Transfer Facility and Logging Operation on Lands Owned by Shee Atika, Incorporated, Admiralty Island (October 1983)

7. Socioeconomic Impact Assessment for Proposed Log Facility and Logging Operation on Lands Owned by Shee Atika, Incorporated, Admiralty Island, Alaska (October 1983)

I wish to thank The Committee for the opportunity to comment on this matter.

I must commence by stating that I am most professionally disturbed by what has happened to the Shee Atika Native corporation.

Our company has been retained to investigate the charges leveled at Shee Atika by the Sierra Club and, through the Club's apparent instigation, by several Natives in the Angoon community. These charges have attacked Shee Atika's plans to develop a log transfer facility at Cube Cove to service their long-term sustained yield of timber resources on Admiralty Island. The Sierra Club has issued legal challenges at each and every possible state and Federal permit application; it is apparent that they will continue to do this. In addition, the Sierra Club has exerted successful lobbying efforts on Federal agencies to go beyond their normal review and approval procedures on Shee Atika permit applications. It is this latter aspect of the proceeding that disturbs me the most. Shee Atika is not receiving fair and equitable treatment by some Federal regulatory agencies. I can unequivocably state that 99.9 percent of these environmental charges and challenges have no technical merit or have distorted facts. The scoping document submitted to the Corps of Engineers, attached as Attachment B to my statement, is just one example of the non-meritorious charges the Sierra Club has raised.

We at CH_2M Hill and our subcontractors have investigated the background situation on Admiralty Island in great detail using highly qualified environmental scientists (marine, fisheries, and wildlife biologists; oceanographers; toxicologists) archaeologists, and engineers. We have investigated the plans of Shee Atika for their log transfer facility at Cube Cove, and their long-term logging plans. We have made recommendations to minimize impacts, which Shee Atika has accepted and incorporated in a very professional and sincere manner.

We have also studied in detail the effects of Shee Atika's operations on subsistence, both marine and terrestrial. These studies show that Shee Atika's operations will have no significant impacts on the subsistence activities of the Angoon residents or any other Natives in Southeast.

Shee Atika has had to spend more money on its environmental studies than the state of Washington spent on its study of the environmental impacts of the proposed Northern Tier

Pipeline. The potential impacts from its operations do not begin to justify this kind of expense.

As demonstrated in the attached memorandum (as well as in the Alaska Department of Environmental Conservation hearing transcripts in greater detail), I wish to assure you that Shee Atika's plans are environmentally safe. In fact, Shee Atika's plans are environmentally meritorious and will become a comparative guideline for similar timber harvesting and handling developments in southeast Alaska.

I sincerely hope that my comments are of some help to you. In my 19 years of experience as a practicing environmental scientist and 11 years as a senior consultant, I have never seen a situation such as this. I do not make such statements lightly.

Respectfully submitted,

V.W. Kaczynski, Ph.D.
Director Environmental Sciences
Certified Fisheries Scientist
(American Fisheries Society No. 1429)

ATTACHMENT A

November 1, 1983

MEMORANDUM

TO: Senate Select Committee on Indian Affairs

RE: Oversight Hearings on Shee Atika, Inc.--Environmental Impacts of Shee Atika's Proposed Log Transfer Facility and Logging Operation on Admiralty Island.

This memorandum will detail the studies which have been undertaken, at Shee Atika's sole expense, by environmental scientists (marine, fisheries, and wildlife biologists; oceanographers; toxicologists) and engineers on the environmental impacts of Shee Atika's proposed log transfer facility at Cube Cove, and the logging operations on its lands on Admiralty Island. These studies demonstrate overwhelmingly that there will be no significant adverse environmental impacts to land or water resources from Shee Atika's operations on Admiralty Island.

I. Scientific Personnel Involved in Evaluating Shee Atika's Activities.

The majority of the scientific investigations which were undertaken were performed by CH_2M Hill, Inc. CH_2M Hill is an international consulting firm of engineers, planners, and environmental scientists. The project manager for the Shee Atika work was Dr. Vic Kaczynski.

Dr. Kaczynski is the director of the environmental sciences division for all of CH_2M Hill, as well as the director of the environmental sciences and planning divisions of the Portland, Oregon, office, where he is located. Dr. Kaczynski has a B.S. in biology, an M.S., and a Ph.D. in limnology from Cornell University. He is a member of the American Fishery Society, the American Society of Limnology and Oceanography, the Ecological Society of America, Sigma Xi, and the New York Academy of Science. He is a certified fishery scientist by the American Fishery Society. A former professor of oceanography at the University of Washington, Dr. Kaczynski has had extensive experience in toxicology and fisheries biology, and specializes in salmon, oceanography, and water quality. He has supervised and conducted numerous scientific studies and tests on the impacts of timber harvesting and processing on the freshwater and marine environment. Dr. Kaczynski has worked as a consultant for numerous state and federal agencies, including the Department of the Interior for the development of the Klamath River Fisheries Management Program, the U.S. Fish and Wildlife Service for the development of their manual for the assessment of impacts of minor shoreline structures, the Environment Canada Fisheries Service, on the impact of potential hydroelectric facilities on salmon streams, and for the State of Washington's Department of Ecology on the oil baseline program in Puget

Sound, among others. Dr. Kaczynski conducted numerous studies in the State of California on the impacts of dry deck log storage on water quality, and had considerable input into the regulations ultimately adopted by the State to regulate these activities.

Dr. Kaczynski was assisted by numerous scientists from CH_2M Hill in his work for Shee Atika. The primary scientists, and their qualifications, are listed below.

> Dr. John Palmisano: Dr. Palmisano has a B.S. in Biology and Conservation from the University of Wisconsin, an M.S. in Fisheries from Utah State, and a Ph.D. in Marine Biology from the University of Washington. From July of 1975 to February of 1977, Dr. Palmisano was a marine biologist at the National Marine Fisheries Service Laboratory in Auke Bay, Alaska, outside of Juneau. Dr. Palmisano has also taught marine biology and fisheries at the University of Western Washington and at the University of Washington, prior to coming to work for CH_2M Hill. Dr. Palmisano has had extensive experience in conducting water quality and marine biology studies in Alaska, having worked in Attu, Shemya, Adak and Amchitka in the Aleutian Islands, as well as in Prince William Sound in the Gulf of Alaska, and Lynn Canal, Chatham Strait, and George Inlet in Southeast Alaska. Dr. Palmisano was in charge of designing the water quality and marine

biology studies which were conducted by CH_2M Hill at Cube Cove in September, 1982. Dr. Palmisano has also performed extensive literature reviews on marine and terrestrial resources in Southeast Alaska, and on the impacts of timber harvesting operations on water quality and marine biology. Dr. Palmisano interpreted the results of the ecological studies performed at Cube Cove and nearby areas, and authored a report entitled Cube Cove and Vicinity--Baseline Ecological Field Studies (September 1982), a copy of which is being provided to the Committee. Dr. Palmisano also authored the Environmental Review (January 1982) which was submitted to the Corps of Engineers, the Alaska Department of Environmental Conservation, and the Alaska Office of the Governor, Department of Policy Development and Planning, in conjunction with Shee Atika's application for a Corps of Engineer permit for the log transfer facility.

Dr. Donald Heinle: Dr. Heinle is a marine ecologist and manager of the environmental sciences department of the Seattle Regional Office of CH_2M Hill. He has experience in estuarine, marine, and freshwater ecology, toxicology, fisheries biology and wetlands ecology. Dr. Heinle has worked with the University of Washington Fisheries Research Institute on its studies of the Kvichak River System and Lake Iliamna in Alaska. Prior to joining CH_2M Hill in 1980, Dr. Heinle was an associate professor at the University of Maryland Center for Environmental and Estuarine Studies at the Chesapeake Biological Laboratory. His work included studies of the effects of eutrophication on Chesapeake Bay, the effects of petroleum hydrocarbons on the physiology, feeding behavior, and population dynamics of copepods, the role of tidal marshes in estuarine food chains, and the toxicity of water in polluted estuaries.

Joseph L. Scott: Mr. Scott has a B.S. in Geodetic Science from Ohio State University, an M.S. in Geography from the University of Illinois, and an M.S. in Oceanography from the University of Washington. He has been employed by CH_2M Hill as an oceanographer and engineering geologist for over ten years. Prior to working for CH_2M Hill, Mr. Scott was a commissioned officer in the U.S. Coast and Geodetic Survey, and was Chief of the International Astrogeodetic Field Party. Mr. Scott works primarily as an engineering manager in the ports and ocean engineering department of the Seattle Ch_2M Hill office. He also has firm wide responsibility for submarine outfalls and pipelines. Mr. Scott is a member of the American Geophysical

Union, the American Society of Civil Engineers, The Association of Engineering Geologists, and the International Association of Engineering Geology. Mr. Scott has had extensive experience in Alaska. He has done field studies for outfalls at Unalaska, Dutch Harbor, Kodiak, and Kenai. He has done shore protection studies at Yakutat, Kenai, Ketchikan, and Saxman. He was responsible for designing the oceanographic studies which were conducted by Ch$_2$M Hill in Cube Cove in September, 1982. Mr. Scott also reviewed literature pertaining to the project, and performed various theoretical analyses on circulation and currents in Cube Cove and Chatham Strait. Mr. Scott authored a report entitled Cube Cove--Oceanographic Study (September 1982), a copy of which is being provided to the Committee.

Mr. Frank Pita: Mr. Pita was the project manager for the project for Ch$_2$M Hill until his resignation from CH$_2$M Hill in April, 1982. Mr. Pita is currently employed with Rittenhouse-Zeman, a geotechnical engineering firm with offices in Seattle, Washington, Portland Oregon, and Anchorage, Alaska. Mr. Pita is the project engineer. Mr. Pita has a B.S. in Geology from the University of the State of New York at Courtland, an M.S. in Earth Science from the University of Tulsa, and an M.S. in Civil Engineering from Oregon State University. Mr. Pita is a licensed engineer in the States of Alaska, Washington and New York, and a licensed professional geologist in the State of Idaho. He is a member of the American Society of Civil Engineers and is currently the vice-president of the Seattle section. Mr. Pita specializes in site development work for projects on land, and marine structures. He has been involved in the design of several marinas, both in the State of Washington and Alaska. He has also worked on various projects involving log sort yards for the Port of Angeles and Weyerhauser Corporation.

Dr. Richard Mishaga: Dr. Mishaga is a senior ecologist in the Portland Regional Office of CH_2M Hill. He has a B.S. in Zoology from Ohio University, an M.S. in Biology from the University of Nevada, and a Ph.D. in Ecology from New Mexico State University. He is the senior ecologist specializing in terrestrial ecosystem analysis. In Alaska, Dr. Mishaga served as the terrestrial technical advisor for the United States Army's environmental impact statement of the Fort Greenley expansion near Delta. On behalf of the Haida Native Corporation in Southeast, he is evaluating the effects of a proposed land exchange on wildlife. He has directed vegetation and wildlife studies for a federal energy regulatory commission license application for a major generating facility on the Skokomish River in northwestern Washington. He directed the preparation of the Blue River irrigation project environmental impact statement in the high mountain lands of Colorado, and was biological task force manager for the Yakima-Tieton irrigation district rehabilitation program. Dr. Mishaga has also provided expertise in wetlands evaluation for municipal and industrial clients. Dr. Mishaga was terrestrial task force manager for the Rocky Mountain pipeline project, technical advisor for the Washington State Energy Facility Siting Council's environmental assessment of the Northern Tier pipeline project and has served on technical advisory boards for endangered species and wetlands. He is a member of the Ecological Society of America, the Northwest Scientific Association, the American Society of Mammalogists, the Cooper Ornithological Society and Sigma Xi. Dr. Mishaga has reviewed the literature pertaining to the impacts of timber harvesting operations in Southeast Alaska, has made aerial reconnaissance flights over Shee Atika's property, and written a report for the Army Corps of Engineers on the potential impacts of Shee Atika's proposed timber harvesting operations.

Ms. Michal Wert: Ms. Wert is a project manager in the Planning Department of CH_2M Hill. She has a B.S. in natural resources planning from the University of Connecticut, and has done graduate work in urban and environmental planning at Portland State University. She is a member of the American Planning Association. Ms. Wert has had extensive experience in managing environmental studies for numerous permitting and land use planning projects, and water and wastewater distribution and collection facilities. Ms. Wert has also developed and conducted several citizen involvement programs. Ms. Wert was responsible for evaluating the socio-economic impacts of Shee Atika's log transfer facility and logging operation.

Shee Atika was also assisted in its studies by Dr. Frank D. Schaumburg. Dr. Schaumburg is a Professor of Environmental Engineering and Head of the Department of Civil Engineering at Oregon State University. Dr. Schaumburg has a B.S. in Civil Engineering from Arizona State University, an M.S. in Civil Engineering with a specialty in environmental engineering from Purdue University, and a Ph.D. in Civil Engineering from Purdue University also, with specialties in Environmental Engineering, Microbiology, and Biochemistry. Dr. Schaumburg is a member of the Water Pollution Control Federation and the American Society of Civil Engineers. He is a registered professional civil engineer in the State of Oregon. Prior to his current employment, Dr. Schaumburg worked for the British Columbia Research Council in Vancouver, British Columbia, as the senior resource engineer in charge of water quality. His work involved fish toxicity evaluation, and the effects of timber harvesting practices on water quality and marine biology. Dr. Schaumburg has been a consultant to the United Nations, UNESCO, the Environmental Protection Agency, the General Accounting Office, and the Institute of Ecology in Washington, D.C. Dr. Schaumburg conducted the seminal study on the impacts of log handling practices on water quality for the Environmental Protection Agency. This study, although done during the 1970s, is still the most comprehensive study on the impacts of log handling on water quality.

II. Studies Conducted by CH_2M Hill on Shee Atika's Proposed Log Transfer Facility and Timber Harvesting Operations.

A. Initial Environmental Assessment.

In conjunction with its application for a Corps of Engineers permit to construct and operate the log transfer facility at Cube Cove, Shee Atika retained CH_2M Hill to perform a preliminary environmental assessment of the potential impacts of the proposed project. CH_2M Hill, primarily through Dr. Palmisano, conducted an extensive literature search, and made a site visit. The results of this work were written up in an document entitled Environmental Review--Shee Atika Cube Cove Log Transfer Facility (January 1982). In this report, CH_2M Hill concluded that the proposed log transfer facility would not result in any expected adverse environmental impacts. It noted that no rare, threatened, or endangered species, or commercial populations of flora or fauna, or critical habitats would be effected by the proposed project. The report also found that the proposed facility would not adversely affect the public's use and access to the Admiralty Island National Monument. It further found that the facility itself would not adversely affect the Monument. With respect to the human environment, CH_2M Hill found that the impacts of the project would be positive, in that it would expand employment opportunities, augment the income of local citizens, increase job opportunities for Alaska Natives, and benefit the economy of Southeast Alaska.

When CH_2M Hill is asked by a client to perform environmental assessment work, it typically begins as it did in Shee Atika's case by performing a literature search and making a site visit. When this work is completed, CH_2M Hill advises the client either that it finds the project environmentally sound, that it does not find it environmentally sound, in which event specific changes and/or abandonment of the project will be recommended, or it advises that additional studies are necessary in order to determine whether significant environmental impacts will result. In Shee Atika's case, after performing the initial work, CH_2M Hill advised Shee Atika that no further studies would be necessary in order to determine that the project would not have significant adverse impacts upon the environment.

B. Subsequent Field Studies.

1. Ecological Field Studies.

Notwithstanding CH_2M Hill's determination, however, the extensive litigation which the Sierra Club was promising over the construction and operation of the log transfer facility caused Shee Atika to determine that it would be prudent to have CH_2M Hill conduct additional studies. Accordingly, additional field studies were conducted from September 13th through 18th, 1982.

The purpose of these studies was to determine physical, chemical, and biological baseline conditions in Cube Cove and Chatham Strait. For comparison purposes, similar studies were conducted in four nearby coves on the western shore of Admiralty Island, Square, Jim's, Ward, and Marble, and at one bight, Square Bight. Water quality studies were conducted in all of the coves and Chatham Strait to determine baseline parameters and the degree of variability from shoreline embayments to the open waters of the Strait. Field measurements included temperature, conductivity, pH, dissolved oxygen, turbidity, light transparency, and salinity. Laboratory measurements included fecal chloroform bacteria, oil and grease, total organic carbon, and color. Sediment samples were collected of bottom sediments to determine the physical and chemical composition of bottom materials. Divers conducted underwater transit dives to estimate the abundance of King and Dungeness crab, fish, marine biota, and to determine bottom type. In addition, crab pots and fishing lines were set. The floating kelp canopy in all coves was estimated, and marine mammal, bald eagle, and sea bird observations were made. In addition, observations of intertidal and subtidal communities were made, and the two streams which enter into the cove were examined for evidence of spawning salmon. Notes on observed subsistence, recreational, and other activities were made.

The results of these studies and an assessment of the potential impacts of the log transfer facility on water quality and marine biology are contained in a report entitled Cube Cove and Vicinity--Baseline Ecological Field Studies (September 1982).

2. Oceanographic Field Studies.

Oceanographic field studies were also performed in Cube Cove from September 13 through September 18, 1982. Field studies included a bathometric survey, wind measurements, seawater temperature and conductivity measurements, tide measurements, and a drogue study. The bathometric study was undertaken to map the underwater contours of Cube Cove and to enable calculation of water volumes in the cove at extreme tide stages. Wind measurements were taken to monitor the effects of wind on surface currents and waves within Cube Cove. Seawater temperature and conductivity measurements were taken to determine the salinity and density and the degree of mixing in the cove. Tide measurements were taken to predict water levels in Cube Cove from published tabular datas. The drogue study was undertaken to define the general circulation patterns in Cube Cove and to predict the effect of the proposed breakwater on such patterns. This information, in turn, would be used to determine the fate of any floatable or sinkable materials such as bark that might be introduced into the water column during the operation of the log transfer facility.

Once the field studies were concluded, theoretical analyses were made to determine the flushing rate, and the circulation patterns for wind induced currents. The results of the oceanographic studies are contained in a report entitled Cube Cove - Oceanographic Study (September 1982).

III. Results of Field Studies.

A. Water Quality and Marine Biology.

The results of the water quality analysis indicated that the water conditions in Cube Cove were similar to both those present in Chatham Strait as well as in the other coves studied. The studies also demonstrated that naturally occurring fluctuations in the measured parameters reverted rapidly to ambient conditions, indicating rapid rates of mixing and flushing present in the Cove. Water quality conditions in Cube Cove were similar to conditions in the other coves studied. Results of the analysis of bulk sediment samples indicated that the sediments in Cube Cove were uncontaminated by pollutants and were composed of heavy, inorganic materials of relatively large size, such as sand and gravel. The occurrence of larger sediments and the absence of lighter, smaller, or organic sediments indicated good circulation and rapid flushing. The sediments in Cube Cove were similar to those in the other areas studied.

The biological investigations indicated that crabs were not abundant in Cube Cove. No King crabs were found and only a few Dungeness crabs were seen.

Two similar studies previously conducted in Cube Cove by biologists from the U.S. Fish and Wildlife Service (1980 and 1982) reported marked differences in crab abundance. During a two-day study in March, 1980, two hundred Dungeness crabs were observed buried in the sand, but no King crabs were seen at all. During a one-day study in March, 1982, only five Dungeness crabs were found, but forty-nine King crabs were observed. The closest known fishery areas for crabs are Hawk Inlet to the north and Freshwater Bay to the west. Alaska Department of Fish and Game crab tagging studies on the east side of Chatham Strait (west coast of Admiralty Island) indicate that the major crab populations in the area are found in Funter Bay and Hawk Inlet.

King and Dungeness crab populations were equally scarce in the other coves studied. Alaska Department of Fish and Game believes that in Southeast Alaska, Dungeness crab are present in the waters of most bays, inlets, and near shore areas during certain times of the year, and that Red King crab are most abundant in bays and along adjacent shorelines at depths of less than 600 feet. Cube Cove does not provide unique or critical crab habitat. Although Cube Cove had a sand bottom, preferred by Dungeness crabs, so did the other coves studied. Large crab populations in Southeast Alaska are normally associated with underwater deltas caused by major streams emptying into marine waters. Cube Cove contains no such deltas.

From all of these studies, it can be concluded that Cube Cove does not appear to support a major crab population, although it may serve as a wintering area. Cube Cove is not designated as a known major fishery area for Dungeness crab or as a known juvenile rearing area or major fishery area for King crab.

Although fish were seen in Cube Cove, no large concentrations of adult salmon or other sport or commercial species were found. There are no catalogued salmon streams or commercial fishing grounds in the cove, and no evidence was found of salmon spawning in the streams entering the Cove. Cube Cove was similar to the other areas studied, except for Jim's Cove, which had a catalogued salmon stream.

The floating kelp canopy, sometimes used to measure primary productivity of marine waters, was relatively small in Cube Cove compared to the total surface area. The percentage of surface area covered with kelp was smallest for Cube Cove of all of the coves studied.

Few species of marine mammals use Cube Cove. The Cove contains no important or critical habitat for any species of marine mammals. The numbers and species of marine mammals seen in Cube Cove were similar to those seen in the other areas studied.

Few bald eagles and sea birds were observed in Cube Cove. The Cove does not provide important or critical habitat to any species of birds. No bald eagle nests occur at the proposed log transfer facility. Bald eagle concentrations in general are correlated with the presence or absence of salmon streams. Jim's Cove, which had the only salmon stream, had the largest number of eagles. The numbers of seabirds sighted at the other coves were low and similar to those seen at Cube Cove.

The intertidal community of Cube Cove was not extensive, and contained only patches of relatively few species. With the exception of the bay mussel and hardshell clams, few commercial or recreational species were found. No extensive beds of eel grass or other ecologically important species or habitats occurred in the cove. Again, the intertidal community of Cube Cove was similar to the other coves visited.

The subtidal community of Cube Cove was also not extensive or very diverse. Filter-feeding benthos and attached algae dominated the rocky habitats. The sand bottom had few individuals and species. The subtidal community of Cube Cove was similar to the subtidal communities of the other areas studied.

The results of the ecological studies, taken as a whole, suggest that Cube Cove was not as productive as the other coves studied. Its dominant habitat type was the relatively unproductive sand habitat, and it had none of the more productive habitats such as eel grass, mud, or salt marshes. The absence of major streams, which contribute important nutrients to marine waters, is another factor which renders the cove less productive than, for example, Jim's Cove, with its salmon stream. Cube Cove also lacked substantial amounts of plant debris, the basis for the marine food web.

No subsistence or recreational activities were observed during the study, although weather and sea conditions were favorable and deer hunting and fishing seasons were open. Nor were any commercial fishing activities observed.

The Report concludes that the construction and operation of the proposed log transfer facility will have no significant long-term impacts on Cube Cove and the surrounding environment because of existing site conditions, proposed mitigation measures and planned operational practices. The log transfer facility will not occupy a major portion of the Cove. Less than four percent of the Cove will be covered by permanent structures, and less than ten percent of the Cove will be utilized at maximum operation. Due to the fact that the proposed fill structures will be made out of rock, there will be a net increase in the amount of rock habitat in the cove. Although there will be a slight decrease in the amount of sand habitat, this is the least productive habitat, and one which comprises the majority of the cove.

B. Oceanography.

The results of the oceanographic studies indicate that the main driving force of the currents and circulation in Cube Cove is the astronomic tide cycle. Under calm wind conditions, and winds of any force from directions other than the northwest, the rise and fall of the tides causes the water in Cube Cove to move in and out in constantly moving and changing eddies. These eddies are created by vortex shedding past Point Hepburn, off the southern end of the Cove, and are maintained during slack tides by residual tidal motion. Winds in excess of ten knots from the northwest cause wind and wave induced circulation patterns to become more predominant in the surface layers of water, but the water still continues to circulate in and out of Cube Cove in a series of eddies. Both the water quality data and the current data indicate that Cube Cove is well mixed, with a continuous exchange of water.

There are no sills or water stratification. The estimated flushing rate for Cube Cove is one-third of the water volume (438 million gallons) every twelve hours, or the entire volume of the Cove every thirty-six hours.

The proposed breakwater will have no measurable impacts on the circulation of Cube Cove. The proposed breakwater will decrease the surface area of the Cove by seven percent and the width of the mouth of the Cove by approximately eighteen percent. The effect on the tide heights, however, will be immeasurable due to the relatively insignificant volume of the breakwater relative to the water body.

The proposed breakwater will not adversely effect the current patterns, and may in fact enhance circulation by strengthening the existing eddies through vortex shedding, much as Point Hepburn currently does. The breakwater will be designed in a curvilinear fashion to allow the current to sweep along the shoreline, eliminating the possibility of deadspots.

Current velocities would not change, because they are primarily a function of tidal motion. Surface current velocities produced by wind from the northwest will be lowered in that portion of the Cove (less than half) which is protected by the breakwater. However, because waves are not the primary driving force for either flushing or circulation, wave attentuation will not decrease either flushing or circulation. Wave induced along shore currents under high winds would tend to strengthen the existing eddies, thereby increasing circulation.

III. CH_2M Hill Studies and Investigations Have Conclusively Determined that the Log Transfer Facility Will Have No Adverse Environmental Impacts.

The results of the studies as well as other information collected by CH_2M Hill were presented to the Alaska Department of Environmental Conservation at an adjudicatory hearing held in March, 1983. The hearing was held in response to the Sierra Club and the City of Angoon's challenge to a certificate issued by the Department that the construction and operation of the proposed facility would meet state water quality standards. The hearing was comprehensive, and dealt not only with issues of water quality, but with all potential environmental impacts, as well as the effect, if any, the facility would have on subsistence and recreational activities.

On the basis of all of the evidence presented at the hearing, the hearing officer concluded that Shee Atika's proposed log transfer facility would have no significant adverse environmental impacts to either water quality or marine biology. Because it will not adversely affect marine resources, and because access to the Cove will not be materially inhibited by the log transfer facility, the hearing officer also found that the log transfer facility would not adversely affect subsistence or recreation.

The hearing officer found that Cube Cove is a low-energy coastal saltwater embayment on Chatham Strait, one of nine coves on the western shore of Admiralty Island between Hawk Inlet to the north and Angoon to the south. Water quality within the cove and surrounding area was generally good, and within the state's standards except for high natural oils. The water quality analysis indicated rapid mixing and flushing rates. The sediments were composed of uncontaminated inorganic materials, primarily sand and gravel. There was a sparse accumulation of marine and terrestrial plant materials on the bottom.

The hearing officer found that Cube Cove had no commercial fisheries. With respect to crabs, he found that it may serve as a winter habitat for King Crab, and that the Dungeness Crab population was subject to extreme fluctuations in abundance. Features normally associated with large crab populations, such as large streams and related deltas, he noted, were absent from Cube Cove.

With respect to biological communities, the hearing officer found that the floating kelp canopy covered less than five percent of the surface, and that the rock intertidal and subtidal habitats were comprised of typical communities for the area--bay mussels, barnacles, brown algae, tube worms, and horse mussels. He further found that the intertidal and subtidal sand habitats contained few organisms. In conclusion, the hearing officer found that there were no major concentrations of commercially or ecologically important species in Cube Cove, no rare, endangered, or threatened species, and no important or critical habitats.

The hearing officer also found that Cube Cove was similar to the five other coves studied.

Turning to impacts, the hearing officer found that the proposed log transfer facility would have few adverse impacts. With respect to the rockfill structures, he noted that recolonization of the fill would probably begin immediately, with full recolonization to occur in one to two years.

Clearly the major issue at the adjudicatory hearing was the impact of wood and bark leachates on water quality and marine biota. Those leachates can be expected to enter Cube Cove in one of two ways. Although the continuous chain transfer system and the A-frame system place logs gently into the water, thereby significantly minimizing the amount of loose bark which will be placed into the water, some dislodging of bark will occur. Second, the runoff from the log sort yard will contain leachates resulting from rainfall upon the wood and bark in the sort yard. Approximately eighty to ninety percent of the runoff from Shee Atika's log sort yard will be discharged into Chatham Strait, the remainder will flow into Cube Cove.

Dr. Kaczynski testified that there have been no documented studies showing that log leachates are toxic to marine organisms in the natural environment. Laboratory studies have shown that toxic substances may be created in the laboratory when wood and bark are ground up and made into a highly concentrated fresh water solution. These studies, however, are not applicable to the natural environment, or at least not in a situation such as Cube Cove, where the tremendously large volume of the receiving water relative to the amount of leachates renders the latter virtually indetectable. In addition to the extreme dilution factor, the potentially toxic materials, which are resins and fatty acids, are immediately broken down by marine microorganisms. Thus, even in fresh water environments, log leachates have not been shown to be toxic in the natural environment.

In the marine environment, an additional factor is present which renders log leachates completely non-toxic. The potentially toxic resins and fatty acids combine with naturally occurring ions in sea water to form insoluble, completely non-toxic salts, which precipitate.

Dr. Frank Schaumburg's testimony at the hearing complemented Dr. Kaczynski's. Dr. Schaumburg's considerable experience as both a consultant and a scientist on log handling issues and water quality impacts from timber harvesting operations was exceedingly useful in his evaluation of Shee Atika's proposed log transfer facility at Cube Cove.

Dr. Schaumburg authored the seminal work on the effects of log handling on water quality, which was a comprehensive four-year study for the Environmental Protection Agency. This study examined the amount of bark loss experienced in various phases of timber harvesting operations, the sinking rates of bark, the effects of log leachates on fish, and the effects of bark deposits on benthic organisms, including but not limited to Dungeness crabs.

As a result of his studies, Dr. Schaumburg discovered that log leachates are quickly consumed in the natural environment by naturally occurring bacteria. He found that log leachates, including bark leachates, occurring in the natural environment in areas with flowing waters will have no measurable toxicity to fish. He further found that bark deposits did not reduce the use of the benthos by microinvertebrates, and indeed might result in an overall increase in microfauna as a result of providing a solid support matrix for organisms and protection from currents and predators. His study found that Dungeness crabs were as plentiful in areas that had substantial bark deposits as in areas that had none.

Dr. Schaumburg visited Cube Cove to examine the area from the perspective of an environmentally sound log transfer facility. He found that Cube Cove was an acceptable site for the facility. He found that the facility and operation, as planned by Shee Atika, was far superior to what Dr. Schaumburg had ever seen before. Dr. Schaumburg testified that he was "shocked" at "all the fuss" over one of the best planned facilities that he had ever seen.

Based upon his experience and the oceanographic information provided by the CH_2M Hill oceanographic study, Dr. Schaumburg testified that any bark dislodged by the log transferring operations would be swept into Chatham Strait in one to three days, and that there would be little or no accumulation of bark on the bottom. He also felt that log leachates would be minimal, and would not have any negative impacts upon marine organisms.

The hearing officer, after considering all of the evidence, made the following findings:

> Log leachates are non-toxic in marine waters. Potentially toxic materials are resin acids and fatty acids, which, in seawater, combine with naturally occurring ions to form insoluble, completely non-toxic salts, which precipitate. (Decision, App. 28)
>
> The rate of log leaching in a natural marine environment will be very slow, being a function of time and surface area exposure. With a continual flow of marine waters along the leaching agent, it can be expected that this chemical complexing will occur instantaneously upon the leachate entering the marine waters. (Decision, App. 29)
>
> Log leachates do not pose water quality problems at Cube Cove. Increases in biological demand (BOD) and chemical oxygen demand (COD) would be immeasurable. There is a sixth order of magnitude level of safety for toxicity, assuming stagnant water conditions, something clearly not present in Cube Cove. (Decision, App. 29)
>
> There would be no water quality violations from the proposed log transfer facility. As the water quality standards themselves have a high degree of safety built into them, and since the standards themselves will not be violated, there will clearly be no adverse impact on marine organisms from the proposed log transfer facility. (Decision, App. 29-31)
>
> As the majority of the runoff will go into Chatham Strait, which has a substantially greater volume of water than Cube Cove, there will also be no water quality violations as a result of that discharge. (Decision, App. 31)

> There will be no significant impact from bark leachates because of log structures, or due to incidental pieces of bark which may be deposited on the bottom of the Cove. Because of good circulation, there should be no water quality violations even in the interstitial waters. (Decision, app. 31)

The last biological issue raised at the hearing was the impact of the breakwater and rockfill structures on juvenile salmonoids. The natural slope in the area where the breakwater and log transfer facility will be located is steep. The slope of the breakwater and rockfill will be less than the naturally occurring slope. Thus, the proposed log transfer facility will not force juvenile salmonoids into water deeper than they would experience in the natural environment. In addition, the critical state for juvenile salmonoids is the home nursery-estuarine environment. Cube Cove has no salmon streams, and thus is not a home nursery for any juvenile salmonoids. Those juvenile salmonoids which do occur in Cube Cove have already begun their seaward migration, are relatively mature, and have already spent time in deep water.

IV. Studies Performed in Conjunction with Environmental Impact Statement Being Prepared by the Corps of Engineers on the Proposed Log Transfer Facility.

A. Wildlife Studies

At the request of the Corps of Engineers, Shee Atika undertook an assessment of the potential impacts of its proposed log transfer facility and its timber harvesting operations on the terrestrial vegetation and wildlife. Vegetation on the land consists of western hemlock/Sitka spruce forests, muskeg communities, riparian communities along streams and lakes, and a very small amount of beach fringe at Cube Cove. This habitat is typical of that found all over Southeast Alaska.

Wildlife habitats on Shee Atika's lands are also typical of Admiralty Island and Southeast Alaska in general.

The key species of concern are the Sitka black-tailed deer, brown bears, and eagles. Deer densities generally on Admiralty Island are rated good to high. The Sitka black-tailed deer population exhibits marked fluctuations that are correlated with available winter range. Winter loss, not predation by either other animal species or man, is the major limiting factor of the Admiralty Island deer population. Lower elevation, high volume, old-growth forests provide the best available foraging habitat and cover for wintering deer. Deer appear to winter as high as conditions permit. During severe winters, they are forced to forage on the open beach and beach fringe, but in mild winters, their range expands to include all forested areas with available forage.

The Alaska Department of Fish and Game has designated high density deer winter range on Admiralty Island. Most of this land borders along the shoreline. Most of Shee Atika's lands south of Cube Cove are separated from the beach fringe by a 1-2 mile wide forest corridor, which encompasses 6,720 acres, and is part of the Admiralty Island National Monument and Wilderness. Only 8 percent of Shee Atika's lands are within the ADF&G high density deer winter range. From 84 percent to 52 percent of Shee Atika's forested lands are below the upper elevation boundaries of the U.S. Forest Service's designation of deer winter range.

High populations of brown bears also occur on Admiralty Island. Important habitat types for bear include alpine denning areas, spring feeding areas (beach fringe) and late summer feeding areas (salmon spawning streams). These habitats are absent or very limited on Shee Atika's lands.

Admiralty Island supports the highest documented densities of nesting bald eagles in North America. Typical nesting sites are large mature hemlock or spruce trees along the coast. One documented eagle nest site occurs on Shee Atika's lands at Cube Cove. No other eagle nesting sites are known on Shee Atika's lands. There are no threatened or endangered plant or wildlife species known to occur on Shee Atika's lands.

Terrestrial impacts of the proposed log transfer facility on vegetation and wildlife are negligible. The primary impact is the loss of less than ten acres of second growth timber on the land which will become the log sort yard.

The timber harvesting operation will result in the replacement of 19,680 acres of old growth forest with second growth forest. The effects of this harvesting will be both beneficial and adverse. The juxtaposition of habitat types after the first phase of logging will create a mosaic of wildlife habitat types and create edge wildlife habitats. Wildlife populations dependant on old growth forest habitats, however, will be reduced.

Over the long term, the cutting and revegetation of the approximately 20,000 acres will reduce the long term carrying capacity of the land for local populations. Shee Atika's lands, however, represent less than two percent of the total 1.2 million acres on Admiralty Island. The estimated wintering deer population of the Island is between 14,000 and 53,000. The estimated wintering deer population on Shee Atika's lands is between 390 and 1,430 deer. The U.S. Forest Service estimates that its clearcutting program causes a 35-40 percent reduction in the number of deer. This rate of reduction, coupled with the fact that Shee Atika's lands represent less than two percent of the total 1.2 million acres of Admiralty Island, indicate that the impact of Shee Atika's logging operations on overall deer wintering populations would not be significant outside the local area.

The impact of the log transfer facility on brown bear will be virtually immeasurable. Logging impacts on the brown bear will be similarly minor. Most of the habitats that can be expected to receive concentrated bear activity will not be greatly affected by logging.

No impacts from either the log transfer facility or the logging operation are anticipated on the bald eagle. A buffer strip will be left along Cube Cove and will maintain the one known nesting site. No eagle activity has been recorded in the upland areas where most of the harvesting will occur.

In summary, Shee Atika's wildlife studies indicate that the log transfer facility will have virtually no impact upon wildlife habitats, and the logging activities will have only minor impacts that will not be significant to the Island.

B. Socioeconomic Studies.

The results of CH_2M Hill's socioeconomic analysis indicate that the project will have significant benefits to Southeast Alaska. No adverse socioeconomic impacts are anticipated.

The construction and operation of the log transfer facility and timber harvesting operations will have minimal impacts on existing populations. The majority of workers for the log transfer and timber harvesting operations will come from the existing labor force in Southeast Alaska, minimizing the number of people moving into the area for employment. Because a seasonal logging camp will be constructed on Shee Atika's property, no impacts to housing in nearby communities is anticipated.

Transportation will be positively impacted by the proposed facility. The increased need for transportation will benefit the private air services in Juneau and Sitka. Commercial passenger water transportation will not be affected since few workers will travel to or from the site by boat and no ferry stops are available at Cube Cove. The log transfer facility, which includes a breakwater, boat dock, and mooring facilities, will provide significant safety opportunities during storms and other emergencies. Such opportunities are currently lacking in the area. Minor impacts to water transportation in Chatham Strait will result from increased traffic for small barge and delivery vessels to Cube Cove, and the removal of timber by raft from the Cove. In light of the size and amount of traffic on Chatham Strait, however, this is not anticipated to be significant.

The labor force for the log transfer facility and timber harvesting operations is expected to increase from 82 workers in year one of operation to a maximum of 160 workers by year three, when maximum productivity is scheduled. Approximately 25 percent of the jobs require little, if any, previous job training or work experience. Although a contract operator will be responsible for hiring, preference will be given to Shee Atika and Sealaska shareholders to the extent permitted by law. A training program will be implemented to train unskilled Native employees. The logging contractor will be required to hire skilled workers from the existing labor force within Southeast Alaska to the extent possible. It is expected that 20 percent of the skilled jobs will be held by shareholders by the time the operation is in full production.

The hiring and training of Native workers fulfills a significant need in Southeast Alaska. The Sitka Community Association estimates that in Sitka alone, Native unemployment is at least 40 percent. The local Native population is in serious need of meaningful employment opportunities.

Direct salaries paid to workers are estimated to increase from about $1.5 million in year one to about $3.1 million by year three. Secondary incomes, the result of service industries that may develop to serve the log transfer facility and timber harvesting operations and personnel, are estimated to range from about $2.2 million in the first year to about $4.7 million at full production.

Communications in the northern Chatham Strait area will also be benefitted by the proposed facility. At the present time, there is no receiver/transmitter station for operation of radio facilities in this area. As a result, radio transmission in this area is infrequent, at best. Shee Atika plans to install a repeater station on its land.

This will bring radio communications to an area which is presently within a "skip" zone.

Recreation will be both negatively and positively impacted by the proposed log transfer facility and timber harvesting operations. Access to Shee Atika's lands and the adjacent Federal lands will be enhanced in that the project will provide numerous safety features for boaters, such as the breakwater and mooring anchors. Cube Cove will be available on a year-round basis because of the increased weather protection.

Since receipt of its lands, Shee Atika has allowed the public to use its lands for subsistence and recreational purposes with a free use permit obtained from the corporation. Road construction and land clearing will increase access to interior lands. Recreational opportunities at the Forest Service cabins on Lake Florence and Lake Kathleen, however, will change over time as areas near the lake are harvested and then reforested.

Neither Shee Atika's log transfer facility nor its timber harvesting operations will have any impact on archaeological or historic resources. The only "historical" resource located on Shee Atika's land is a small cabin and boat pullout. These were constructed 40 to 60 years ago, probably in conjunction with the fish trap tender that seasonally used the area. Neither the proposed log transfer facility nor the timber harvesting operations will impact the cabin. No other known historical or archaeological artifacts exist on Shee Atika's lands.

C. Freshwater Biology Impact Assessment.

An assessment of the impacts of the log transfer facility and timber harvesting operations on the freshwater streams and lakes within Shee Atika's property was also performed by CH_2M Hill. The freshwater habitats on Shee Atika's lands are typical of those found in Admiralty Island. Four water sheds, Peanut Lake, Lake Kathleen, Ward Creek, and Lake Florence, occur within the outer boundaries of Shee Atika's property. (Title to the three lakes were excluded from Shee Atika's conveyance, and remain in Federal ownership.) Peanut Creek is the only stream catalogued for salmon by the Alaska Department of Fish and Game within Shee Atika's property. It is catalogued for pink salmon up to the mouth of Peanut Lake, where a barrier exists. Kathleen Creek, Ward Creek, and Florence Creek are also catalogued for pink salmon for those portions of the creek which are west of Shee Atika's property. A geologic fault which runs along the western shoreline of Admiralty Island has created barriers to upstream salmon migration in these three streams. The western portion of Lake Florence Creek outside Shee Atika's property is also catalogued for Coho and Summer Run Chum Salmon. None of the mouths of these streams are within Shee Atika's boundaries.

Peanut Creek represents approximately 2 percent of the 49 catalogued streams entering the east side of Chatham Strait and 0.5 percent of the 204 catalogued streams entering all portions of the Strait. The average annual run of Peanut Creek is about 2,500 salmon, or 1 percent of the anadromous fish population on the west coast of Admiralty, and about 0.4 percent of the population for all streams contributing to Chatham Strait.

The fishery resources of the three lakes is characterized by the cutthroat-Kokanee-Dolly Varden complex common to most of the landlocked lakes on the Island. Unlike at least eight other lakes on the Island, they contain no searun populations of fish. The lakes are 3 of the 22 lakes on the Island larger than 120 acres, and they represent 2 percent of all the Island's lakes. Recreational fishing takes place in Lake Florence and to a lesser degree in Lake Kathleen and Peanut Lake. Lake Florence and Lake Kathleen have U.S. Forest Service public recreation cabins. All three lakes are accessible by float plane. Trail easements also connect these lakes to Cube Cove and the surrounding Monument lands. Because no trails exist, however, it is unlikely that many people arrive at the lakes by foot.

Other, more extensive opportunities for recreational fishing occur in the Admiralty Island lakes recreational area located near the center of the Island.

This area, also accessible by float plane as well as by boat from Mitchell Bay, contains 15 lakes larger than 30 acres, and the Cross Admiralty Canoe Trail with 43 kilometers (27 miles) of fishing streams, 7 public cabins, and 1 commercial resort.

The log transfer facility and log sort yard area contain no freshwater resources. There will therefore be no freshwater impacts caused by the construction or operation of the proposed facility.

Freshwater impacts of Shee Atika's logging operation will be mostly beneficial. There will be no significant adverse long-term impacts to freshwater habitat, recreational fisheries, or subsistence fisheries (assuming any exist). Shee Atika plans to harvest its timber in accordance with the guidelines of the Alaska Forest Resources and Practices Act. It plans to leave an unlogged buffer strip, which may be selectively logged in places, along major streams and around the lakes on its property. Recent studies in Southeast Alaska by the National Marine Fisheries Service indicate that clearcut logging with adequate buffer zones of uncut timber effectively protects freshwater habitats and resources, and may in fact enhance these resources by increasing fish cover and aquatic food supplies.

D. Subsistence Studies.

The last area studied by CH_2M Hill was the subsistence use of the Cube Cove area and Shee Atika's lands, and the potential impacts which the proposed project might have on such activities.

Studies were conducted to determine the major types of traditional food items preferred by subsistence users and to determine the relative occurrence and abundance of these items in Cube Cove and on Shee Atika's lands. Observations of subsistence use occurring on or near Shee Atika's lands were made by CH_2M Hill at various times during the past several years, as well as by Shee Atika personnel. In addition, the mortality rate for Sitka black-tailed deer was estimated, both for Shee Atika's lands, as well as for the Island as a whole, and compared to the average annual harvest of deer by the residents of Angoon.

The major marine subsistence activities in this area include intertidal gathering of seaweeds, mussels, clams, cockles and gumboots; fishing for salmon, halibut, rockfish, codfish and crab; and hunting for seal and sea lion. In general, marine food items and other marine organisms are not abundant in Cube Cove. Of the 15 food items supposedly used by the residents of Angoon, 10 were rare to absent -- red sea ribbon, black seaweed, pacific salmon, rockfish, pacific cod, heart cockle, black chiton (gumboot), pacific herring, harbor seal, and northern sea lion; two were considered common -- hardshell clam and pacific halibut; and one was considered abundant -- bay (blue) mussel. The presence of the remaining two food items was variable: dungeness crab were abundant in March, 1981, but rare in March and September, 1982; king crab were common in March, 1982, but absent in March, 1980 and September, 1982.

The main terrestrial subsistence activity practiced by the Residents of Angoon is deer hunting. Traditional subsistence hunting areas for the village have included western Admiralty Island and eastern Baranof and Chicagof Islands. Most of the deer hunting, however, is done on Admiralty and Chicagof Islands, within a 20 mile radius of Angoon. Angoon lies approximately 35 miles south of Cube Cove.

The total annual deer harvest for Angoon has been estimated at 410 deer. The most common method of hunting is by motorized boat along the shoreline from August to December. Beach hunting normally intensifies in November and December when snow at upper elevations forces deer into the lowlands.

Opportunities for beach hunting on Shee Atika lands are limited to only about two miles of shoreline near Cube Cove. Although Shee Atika's lands provide the potential for forest and muskeg hunting, access to hunting areas is severely restricted by dense forests which much blowdown and no trails.

Generally, the maximum number of deer that can be harvested yearly without adversely affecting the population is equal to the number of deer that would normally die during an average year, if the population remained stable. The potential surplus of deer on Shee Atika's lands that is available for subsistence and recreational hunting can be roughly approximated by estimating the annual mortality of deer on those lands. It is estimated that Shee Atika's lands have a wintering deer population of between 390 and 1,430 deer in old growth forest below 1,000 feet elevation. Based on computer simulation studies of black-tailed deer populations, it is estimated that the surplus deer population on Shee Atika's lands ranges from 160 to 590 deer.

On Admiralty Island as a whole, approximately 613,000 acres of the Island are below 1,000 feet. Assuming comparable winter range deer densities, the wintering deer population of Admiralty Island would be between 14,000 and 53,000. The estimated surplus deer population for the total Island ranges from 6,000 to 20,000. Of this harvestable surplus, Angoon subsistence hunting accounts for only 1.8 to 6.7 percent of the total. In short, many more black-tailed deer can be harvested than is now occurring.

Periodic observations of CH_2M Hill personnel and Shee Atika personnel over the past three years have resulted in no observed subsistence activities occurring in Cube Cove or on Shee Atika's lands. CH_2M Hill personnel spent a week in Cube Cove in September of 1982 and a week in December of 1982. Both hunting and fishing seasons were open at this time. Shee Atika personnel have been on site periodically since the conveyance of December of 1981. Personnel from Shee Atika have been on the property daily since June of 1983. No subsistence activities were observed during this time. Indeed, the only residents of Angoon seen during this entire time were two residents who came to Cube Cove not to subsist, but to inquire about employment opportunities in Shee Atika's timber harvesting operations.

The issues of the use of Cube Cove and the surrounding area by the Natives of Angoon for subsistence, and the impact that the proposed log transfer facility would have on subsistence were considered in great detail by the Department of Environmental Conservation in its hearing on the water quality certification. After considering in detail all of the arguments and evidence on subsistence, the hearing officer concluded that Cube Cove was not an important or critical subsistence resource area, that it was not an important or frequently used subsistence area for Angoon Natives, that there was no credible evidence that the installation and use of the proposed log transfer facility would adversely impact recognized subsistence rights, and that there was no evidence that Shee Atika was unwilling to recognize or cooperate in assuring opportunities for the subsistence use of the Cube Cove area. These findings were reaffirmed by the Commissioner in his decision.

ATTACHMENT B

Sunrise, Mt. McKinley Ansel Adams

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July 15, 1983

Col. Neil E. Saling, District Engineer
Army Corps of Engineers
Pouch 898
Anchorage, Alaska 99506

Re: Cube Cove Log Dump and Clearcutting

Dear Col. Saling:

Enclosed please find the scoping comments of the Village of Angoon, the Angoon Community Association, Sierra Club, the Sierra Club Alaska Task Force, the Wilderness Society, and the Southeast Alaska Conservation Council. We are sending under separate cover a brief from the case of Angoon v. Marsh, filed on March 21, 1983, and relevant affidavits filed in that case.

Please do not hesitate to contact us if you have any questions about these materials.

Respectfully submitted,
Sierra Club Legal Defense Fund, Inc.
Walter Burton
By:

DURWOOD ZAELKE, Staff Attorney

RICHARD WHISNANT, Legal Intern

MEMORANDUM

To: Neil E. Saling, District Engineer
From: Sierra Club Legal Defense Fund,
Re: CUBE COVE LOG DUMP AND CLEARCUTTING:
COMMENTS FOR CORPS OF ENGINEERS'
ENVIRONMENTAL IMPACT STATEMENT (EIS)
Date: July 15, 1983

INTRODUCTION

The following scoping comments on the Cube Cove log dump and clearcutting are submitted by the Sierra Club Legal Defense Fund and Walter Burton on behalf of the Village of Angoon, the Angoon Community Association, the Sierra Club, The Sierra Club Alaska Task Force, The Wilderness Society, and the Southeast Alaska Conservation Council. Many of these groups also have submitted other comments under separate cover.

The most important issue in scoping is to properly define the proposal that will be studied in the EIS and to identify all reasonable alternatives that will avoid or mitigate the potential environmental harm caused by the proposal. Here we maintain that the only proper definition is one that includes the clearcutting as well as the log dump. We also maintain that among the alternatives that must be studied, it is essential to include the alternative of continuing to manage the area as National Monument and Wilderness ("no action") and the alternative of exchanging the interest claimed by Shee Atika for other resources off of Admiralty Island.

THE PROPOSAL MUST BE DEFINED BROADLY

The log transfer facility at Cube Cove and the clearcutting of the surrounding lands are related to several other major federal actions, all of which must be studied together in a series of tiered EIS's. § 1501.4(d).

First, a full EIS must be prepared on the Forest Service management of Admiralty Island (to date, only an EA has been done). § 1502.4(b), (a), (c)(1). At the same time, another EIS must be done on all log transfer facilities in Southeast Alaska. The log transfer operations are related "Generically,... [as they] have relevant similarities, such as ... impacts, alternatives, methods of implementation, media, [and] subject matter." § 1502.4(c)(2). They also are related geographically. § 1502.4(c)(1).

Once these two generic EIS's have been done, a site-specific EIS must be done on the Cube Cove log dump and the clearcutting of surrounding lands. The site specific EIS must consider not only the two generic EIS's, but also all other related environmental reviews, and all other related federal actions. § 1502.25; 1501.7(5), (6).

These related federal actions include management actions under § 22(k) of the Alaska Native Claims Settlement Act, which conceededly applies; § 402 of the Clean Water Act, which also conceededly applies (see Stipulation, Angoon v. Marsh (D. Alaska, July 13, 1983)); and all other federal permits and authorizations.

THE CORPS AND THE FOREST SERVICE SHOULD BE JOINT LEAD AGENCIES

Given both geographical proximity and functional interdependence, the Corps and the Forest Service are required to coordinate their environmental studies by designating one or both as a "lead agency." Lead agency designation must begin before the scoping process is closed. 40 C.F.R. 1501.7(a)(4,5,6).

> §1501.5 Lead Agencies
>
> (a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:
>
> (1) Proposes or is involved in the same action; or
>
> (2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographic proximity. 40 C.F.R. 1501.5

The Sierra Club respectfully suggests that the Corps and the Forest Service agree to be joint lead agencies, pursuant to 40 C.F.R. 1501.5(b) and the Corps' regulations at 33 C.F.R. §230.14(b). Alternatively, the Forest Service should be designated as the lead agency since they have responsibility for the overall management of the Island, of which Cube Cove is but a part.

This designation and the requests for cooperating agencies cutlined below must be done while the scoping process is still underway. "The lead agency shall: (1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time . . . .(b) Each cooperating agency shall . . .(2) Participate in the scoping process." 40 C.F.R. 1501.6(a)(1), (b)(2).

OTHER COORDINATION

Wetlands. The facility is to be located in and around Cube Cove. These areas are wetlands. Wetlands are subject to special Corps and environmental regulations.

> §320.4 General policies for evaluating permit applications.
>
> . . . .
> (b)(1) Wetlands are vital areas that constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. 33 C.F.R. §320.4

Cube Cove is the type of wetland deemed critical; it "[serves] important natural biological functions, including food chain production, general habitat and nesting, spawning, rearing and resting sites for aquatic [and] land species . . . ." 33 C.F.R. §320.4(b)(2)(i). Thus the Corps is mandated to study cumulative and comprehensive effects on the areas adjacent to Cube Cove:

> Although a particular allocation of wetlands may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetlands resources. Thus the particular wetland site for which an application is made will be evaluated with the recognition that it is part of a complete and interrelated wetland area. 33 C.F.R. §320.4(b)(3).

The District Engineer is advised by the regulations to consult representative of other agencies: the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the EPA, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate state agency, the Department of Environmental Conservation.

Executive Order 11990, Protection of Wetlands, 24 May 1977, makes compliance with the wetlands provisions of 33 C.F.R §320.4 necessary, and requires the consultation and coordination referred to above.

Agricultural lands. The utilization of Cube Cove and adjacent lands by Tlingit Indians from Angoon is a highly refined and specialized form of agriculture. Anthropologists studying Tlingit culture have described their careful conservation practices. See, e.g. affidavits of Tollefson and de Laguna. Thus this land should be considered "unique agricultural land." 33 C.F.R. §230.25(c)(1), citing CEQ Memorandum, August 11, 1980, Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing NEPA. This memorandum directs coordination with the Department of Agriculture. The relevent division of USDA should be made a coordinating agency.

Fish and Wildlife. Fish and wildlife considerations are absolutely critical in this proposal. Cube Cove is a rich source of salmon and other fish; the adjacent lands provide deer, furbearers, and bear to the residents of Angoon. Thus "early coordination with the . . . Regional Director of the Fish and Wildlife Service (FWS), the . . . Regional Director of the National Marine Fisheries Service (NMFS)" and the appropriate state fish and wildlife officials is necessary. 33 C.F.R §230.25. The applicant is to "be urged to modify his proposal to eliminate or mitigate any damage to such resources. . . ." 33 C.F.R. §320.4(c). Because of the importance of Cube Cove as habitat for fish and wildlife we urge the Corps to request coordinating agency status for each of the above agencies.

Water Quality. Coordination with the Regional Director of EPA is required in determining compliance with the Clean Water Act of 1977. Also, a state certificate is needed, requiring coordination with state water quality officials. 33 C.F.R. §230.25(a)(3), §320.4(d).

Coastal Zone Management. Since Cube Cove and all of the lands proposed to be clearcut are in the coastal zone, the EIS "must be coordinated with the appropriate state agency [the OMB] responsible for administering the state's approved coastal management program. Coordination should be initiated early in the planning or scoping process to insure compliance with the consistency provisions of the

Act." 33 C.F.R. § §230.25, 320.4(h), 325.2(b)(2)(ii).

Historic, Scenic, and Recreational Values.. Particular attention must be paid to these types of values, as indicated at 33 C.F.R. §324.4(e), given the status of the land as a National Monument/Wilderness. §324.4(e)(2)(v).

THE ALTERNATIVES SHOULD BE BROADLY DEFINED

The delineation of alternatives should do more than canvass those options available to the Corps. Under NEPA, all alternatives must be included which are reasonable, whether or not within the jurisdiction of the lead agency. 40 C.F.R. §1502.14(c). We suggest, as a minimum, that the following alternatives be explored and evaluated in detail:

1. "No Action": continued management as National Monument/Wilderness.

This alternative requires continued management as a National Monument/Wilderness, consistent with the purposes of the Alaska Lands Act and wilderness areas:

> A wilderness . . . is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain . . . . and which . . . generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable . . . ." Wilderness Act of 1964, 16 U.S.C. §1131(c).

On Admiralty Island, this alternative would entail no harvesting of timber. See Alaska Lands Act, §503(c) and (d).

2. Exchange Shee Atika's interests on Admiralty Island for alternative resources off the Island

This alternative is clearly reasonable; indeed, it was the chosen course of action for two other native corporations who were originally granted land on Admiralty. EIS's have been prepared for those actions.

3. Manage for multiple-use, sustained yield

This alternative would allow limited harvesting subject to the conditions on federally owned or administered land set out at 16 U.S.C. §583 et seq. and §22(k) of the Alaska Native Claims Settlement Act. This might include a cooperative agreement as defined in §583(a) as the threshold requirement for allowing the proposal.

Under this alternative or any allowing cutting, a range of options is available for transferring logs. The following, as a minimum, should be explored and evaluated:

a. Helicopter transfer
b. Balloon transfer
c. Direct loading onto barges
d. Alternative sites and designs for the log dump

THE THREATENED LOSS OF ANGOON'S SUBSISTENCE CULTURE REQUIRES A WORST CASE ANALYSIS.

The Corps is required by CEQ guidelines, 40 C.F.R. §1502.22, and Corps regulations, 30 C.F.R. §230.36(c), to do a worst case analysis of the effects the Cube Cove project may have in destroying the traditional Tlingit subsistence culture. The catastrophic possibility has been cogently pointed out in the affidavits of Dr. Kenneth D. Tollefson and Dr. Frederick de Laguna, attached, as well as the affidavits of the Angoon natives themselves.

The need for a worst case analysis is underscored by the importance of the existing culture in Angoon. As Mayor Wally Frank states so eloquently in his comments, the "Tlingit Indians of the Village of Angoon on Admiralty Island envy no people on earth." This is so even though they have the lowest per capita income in southeast Alaska and even though there is 83% unemployment. What they have, in lieu of cash income and a wage economy, is their traditional subsistence hunting and fishing. Every threat to the fish and game in and around Cube Cove is a threat directed at the very lives of the people of Angoon and at their freedom to live life as they always have lived it, in harmony with nature. For them, there is no choice whether or not to "live off the land." The land _is_ their life.

The CEQ and Corps' regulations require a worst case analysis when, as here, there are "data gaps or lack of information relevant to significant adverse impacts bearing on the decision in the action." 33 C.F.R. §230.26(c). The worst case analysis requirement was recently applied in Sierra Club v. Sigler, 18 ERC 1649 (5th Cir. 1983). There defendants Corps of Engineers had issued permits authorizing the construction of a deepwater port at Galveston, Texas. The Sierra Club alleged that the EIS was insufficient because it did not consider "the catastrophic 'worst case' oil spill analysis urged by the Sierra Club--involving a total cargo loss by a supertanker in the Bay . . . ." 18 ERC at 1657. The Court noted that the remoteness of the possibility of the worst case did not obviate the requirement for the analysis, but rather was a factor that the decisionmaker may consider in making the decision. 18 ERC at 1661

The worst case possibility in the instant case is the destruction of the traditional Tlingit culture. Under CEQ and Corps regulations, the Corps must consider in its EIS the possibility that this will occur and the effects such destruction would have. These effects include those on the natives of Angoon (where 83% are without jobs in the wage economy) and Tlingit living elsewhere ("The community of Angoon is the anchor of Tlingit culture . . . ." Tollefson). Among the specific effects that must be considered are "alcoholism, increased mental health problems, migration, unemployment, malnutrition, and disease" See, e.g. affidavit of Dr. Tollefson, ¶16, and affidavit of Dr. de Laguna, ¶10. Equally important are the effects on our society as a whole of the extinction of yet another native American culture.

The worst case analysis should be coordinated with the subsistence study required by §§810 and 506 of the Alaska Lands Act.

OTHER CONCERNS

We also would appreciate learning when the required public notice was published in the Federal Register,(40 C.F.R. §1501.7(e)(3)), and when the transcript of the public scoping meetings will be available. Finally, we would like to stress that while we and others interested in this proposal have a considerable amount of relevant information to provide, under the CEQ regulations the Corps "shall independently evaluate the information submitted and shall be responsible for its accuracy." Id. at §1506.5.

CONCLUSION

We appreciate the opportunity to submit these scoping comments and look forward to working closely with the Corps to insure that this EIS properly considers the interests of Angoon and our other clients.

City of Angoon
P. O. Box [illegible]
Angoon, Alaska 99820

Telephone
(907) 788-3653

July 14, 1983

Col. Neil E. Saling, District Engineer
Army Corps of Engineers
Pouch 898
Anchorage, Alaska 99506

Re: Scoping Comments

Dear Col. Saling:

The Tlingit Indians of the Village of Angoon on Admiralty Island envy no people on earth. We have our religion, our tradition, and our Island. We ask for nothing more, nothing less. Our subsistence hunting and fishing way of life has made our children healthy and bright and their spiritual beliefs strong. We want our life on Admiralty Island to continue as it has always been.

Yet as I walk through our village, as Tlingit Indians have done through the ages, a sadness overwhelms me to think that our culture may soon be ended. A logging operation plans to blast 30,000 tons of rocks from the beach at Cube Cove to make a breakwater, and then to use the cove as a log dump. The logging operation also plans to clearcut 23,000 acres of our virgin forest. All of this will take place in our traditional subsistence hunting and fishing grounds.

You told us at your meeting here June 8, 1983, that you would study the log dump and logging operation and try to find ways to keep our Island and our culture from being harmed. We ask, and we hope, that you do a very careful job.

We have depended on the lands and waters you are about to study since the Great Flood. We know those places and the plants and animals that use them because they are our source of life and the basis for our traditional Tlingit culture. And it has been this way for over 10,000 years according to your anthropologists, some of whose statements we have attached. So this place, Cube Cove, and the lands around it are very important and familiar to us. You will remember that from the statements made by our elders and our hunters and fishermen at the meeting on June 8, 1983. We love and care for Cube Cove and want our children to be able to hunt and fish in these places, as we have done for so long. We ask that when you study them you will consider all alternatives that will keep us from losing them.

The Tlingit know that things are connected in ways that are not always so obvious. Our subsistence lifestyle helps us remember this. It would be unwise for us to forget the animals and plants we depend on. We are connected to them; their fate is our fate. Knowing this, we have learned to live in harmony with our island and have protected it carefully for the last ten thousand years. The crabs and fish and deer are still plentiful around Cube Cove, although this is not true in other places now that so many hunters and fishermen come from elsewhere to our traditional subsistence lands. Left with only ourselves and our lands we could expect ten thousand more years with plenty to eat and keep us busy.

But we are not left alone. First one small part is destroyed and then other parts, and we are afraid that soon the whole will be gone. If we lose Cube Cove to the loggers we fear it will destroy our traditional Tlingit culture. Lydia George, Mother of the Raven Tribe, has said: "To us, Admiralty Island is like a big dish; you are free to use it, but not to break it." If you break one part of a dish the whole thing becomes less valuable, maybe worthless; so it is with Admiralty Island. This is why we want you to make sure you study Cube Cove with an eye to what will happen elsewhere--in the forest, when all that land is clearcut; in the waters, where we get our crabs and salmon, and where all the logs will be dumped; in the air, with all that dynamite and rock exploding; and in our village where our lives and our children's lives depend on food from Cube Cove and surrounding lands. We have taken care of this Island for ten thousand years and it takes care of us. Now we ask you and the Corps of Engineers to take care of it as well as we have, for the next ten thousand years.

We know there are alternative ways of dealing with the desires of our neighbors in Sitka for money. A log is a log to the person who buys it in Japan. But if that log was once a tree on Admiralty we will feel its loss when the deer it sheltered is no longer there and when the fish and crabs of Cube Cove are poisoned by its bark. Why not find some other places to cut trees? We know very well there are lots of forests around: we also know there are few traditional peoples like ourselves who depend on them. We want you to look for these other places to cut and discuss them in your report. Then we would not have a log dump at Cube Cove.

We have included some statements by residents of Angoon and a brief from the case of Angoon v. Marsh which will describe for you the particular ways in which our subsistence lifestyle depends on Cube Cove and the lands around it. We want you to remember that for us, this is not just a light matter. This is our culture, which means our ancestors and our children's children, and you are holding that culture in your hands as you read these statements and decide what to do. It also is not just a matter of this log-transfer facility: we know why that is there; it is there to carry off a forest which is being cut down. Their cutting is what you would call a "related activity," which means you should study that, too.

This business of wanting to clearcut our subsistence lands has been going on for a while. We have been fighting it in the courts for over ten years. That's not very long compared to ten thousand year. But it's probably a lot longer than you and your fellow Engineers will take to make up your mind on this decision. Please consider that what may be a small decision to you is, for us, a decision about the future of our world, our way of life, and our means of living.

We ask that you read our documents with that in mind and we wish you wisdom and breadth of vision in your study of Cube Cove and our traditional hunting and fishing grounds..

Sincerely,

Wally R Frank Sr

Wally Frank, Sr.
Mayor, City of Angoon

CH2M
HILL
engineers
planners
economists
scientists

November 7, 1983

K14959.A0

Mr. Richard Baenen, Esquire
Baenen, Timme, DeReitzes & Middleton
1049 30th Street, N.W.
Washington, D.C. 20007

Dear Mr. Baenen:

Subject: Clarification of Several Questions Asked During the Select Committee on Indian Affairs Oversight Hearings of November 2 and 3, 1983

Senator Murkowski raised several questions during the oversight hearings regarding the problems of Shee Atika Inc. I can assist in clarifying some of them.

First, he questioned how much logging occurred in the vicinity of Cube Cove. U.S. Forest Service (USFS) and Alaska Department of Natural Resource records indicate that at least 200 acres were logged immediately adjacent to Cube Cove. Aerial photography (1929 by U.S. Navy and 1946 by USFS), available in the Sitka office of the USFS, indicates that the area logged is closer to 400 acres. I personally inspected these photographs. These logged areas were all low-elevation lands surrounding Cube Cove. The logs were apparently skidded down to the Cube Cove beaches and made up into log rafts in the cove. I personally walked through these logged areas. Square-cut stumps, pieces of broken yarding cable, and similar evidence still remain to document these logging activities. The 1946 photography indicates that a fair amount of log skidding occurred on a cleared beach strip very near the proposed Shee Atika log transfer facility. Incidentally, the 1946 photos show a fish trap (New England Fish Company) in active operation just south of Cube Cove and a small fish trap tender's cabin in Cube Cove near the log skidout area.

Second, Senator Murkowski asked about the environmental studies commissioned by the Sierra Club. These studies were addressed in great detail in the Alaska Department of Environmental Conservation hearings. The hearing officer found that one

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of the people conducting the studies was not technically qualified and that the study results and conclusions offered by this person were not technically correct or acceptable. The other person was found to have qualified expertise in marine biology and conducted scuba dives along transects in Cube Cove. The results of these dives completely supported and confirmed the work done by CH2M HILL biologists. The transects contained no crabs and, generally, were naturally sparse in marine life. There was no evidence of pollution or degradation of any kind. In fact, this Sierra Club witness thought that Cube Cove was pristine and in a completely natural state. He did not know that Cube Cove had been logged in the early 1900's (apparently through the 1930's). Cube Cove had evidently completely recovered from the past logging, yarding, and raft makeup, which discredits the argument that much more controlled activities today would cause irreparable harm.

Finally, much comment and questioning revolved around the subsistence activities of the Angoon people. Angoon commissioned a subsistence study in 1976 by Alaska Consultants Inc. The Alaska Department of Fish and Game performed a subsistence study and wrote a subsequent report dated 1982. These reports clearly reveal that the great majority of Angoon subsistence activity occurs within a 20-mile radius of Angoon, including areas on Chichagof, Catherine, Baranoff, and Kupreanof Islands. Cube Cove is mentioned as receiving occasional usage by a few people. The historical usage of the Cube Cove area by the Angoon people must have been even rarer. Dr. DeLaguna, in her 1960 anthropological book on the Angoon people, stated that the Angoon people apparently did not use the northwest coast of Admiralty Island (the Cube Cove area): "Our informants had little to say about it, and it probably had little meaning for them except as scenery to be passed in going to Juneau or Hoonah." Dr. DeLaguna, in her latter books on the Tlingit people (1964, 1972), assigns the Cube Cove area as a traditional area of the Auk (Juneau) Tlingits.

Cube Cove probably never was a popular subsistence spot because it was never rich in traditional subsistence resources, was too exposed to storm action, and too many better potential subsistence locations were nearby. In any event, the proposed activities of Shee Atika will not, in my professional opinion, significantly affect native subsistence activities. The proposed log transfer facility is well designed, incorporating the latest developments in drainage and runoff control, and the runoff will easily meet all state and federal water quality criteria. Shee Atika has also made sincere commitments to meet best management practices for the log transfer facility and Alaska State standards for logging, which are formulated to protect water quality and fish and wildlife resources.

Finally, there appeared to be a conception that Shee Atika's property will be one big clearcut. This is not true. The lands will be cut in patches over a 20- to 40-year period. Natural revegetation is high in the area. There will be significant riparian habitat left as buffer strips and, most important, there is the large (6,720-acre) beach buffer strip, one to 2 miles wide. These 6,720 acres remain in U.S. Forest Service ownership, will not be touched, and are the true critical winter deer habitat in this area. Our wildlife biologists calculated that some 390 to 1,430 deer will come from the area of Cube Cove and adjacent uplands. This breaks down to one deer per 17 or per 5 acres, respectively, in this critical winter habitat alone.

I sincerely hope that these additional clarifications will be of value to the Committee.

Respectfully submitted,

V.W. Kaczynski

V. W. Kaczynski, Ph.D.
Director, Environmental Sciences

PDC174.120.3

Senator MURKOWSKI. I am going to hold questions until we reach the end of the panel discussion, but I occasionally violate my own rules, which I suppose is a prerogative of the Chair.

Senator STEVENS. You are learning.

Senator MURKOWSKI. Do you have any observations at this time?

Senator STEVENS. No.

Senator MURKOWSKI. Our next witness will be Richard Baenen, attorney.

Mr. Baenen, we welcome you to the committee. We look forward to your testimony.

STATEMENT OF RICHARD ANTHONY BAENEN, ESQUIRE, BAENEN, TIMME, DE REITZES & MIDDLETON

Mr. BAENEN. Thank you, Mr. Chairman.

I am sure that the committee is not interested in hearing lawyers squabble with one another. I know our clients are certainly tired of it.

We have represented Shee Atika since 1979. I think a few points need to be laid to rest.

You will constantly find references to the fact that Shee Atika is somehow intransigent and has resisted efforts to take land off Admiralty Island that would be of equal or greater value. That is pure balderdash.

We worked for the better part of a half a year with the Forest Service, the Department of Justice, and the Department of the Interior while the D-2 bill was pending, and we were unable to find any land even remotely near equal value.

Second, you will find throughout all of the materials that are submitted to you by our friends on the other side references to Shee Atika's selecting this or Shee Atika's taking that. Shee Atika is on North Admiralty Island by virtue of congressional mandate, a matter which was subject to intense debate and then resolved in Shee Atika's favor.

You will also see in the presentations of the Sierra Club, Angoon, and others that Shee Atika is trying somehow to avoid the courts. We would welcome decisions from the courts. But we find ourselves constantly faced with the Sierra Club seeking to delay. Delay is the name of their game. The last thing they want is a judicial decision because every time we get to the merits, they lose, and they know they will lose, so they keep putting things off.

I find it extremely embarrassing, as a professional attorney with over 20 years of practice, to find other members of the profession will deal in the way they have. They have perverted the judicial and the administrative system, and they will continue to do so, to seek their own ends, and it is absolutely balderdash again for these gentlemen to stand before this committee and state that they are not the instigators of the efforts to keep Shee Atika from developing its land on Admiralty Island. The history bears out the contrary.

You will find that they started as early as 1973 in efforts, after the Settlement Act was passed, to try to preclude any commercial development on Admiralty Island. They may now claim that they are merely here to help the Natives of Angoon in their efforts to preserve Tlingit culture and to preserve subsistence.

That is because a little bit of heat is starting to come off; is being generated from what they done. You have a national institution which is dedicated to destroying a native corporation. They do not care about the 1,900 Natives out of Sitka. These are not people to them. These are not Native Americans. This is a name on a pleading. They have no respect for them. They have no respect for anything other than their own policies and their own ideals.

I used to be a conservationist. I can tell you, I have quit every organization I have belonged to because I cannot stand or tolerate what they have done. And if I sound hot under the collar, you can be assured that I am doing my very best to restrain myself. I have not used any "expletive deleted" to describe what I consider to be their conduct, and I can assure you that their day of reckoning is going to come.

They have handed out to the committee, for example, something that comes from their own magazine. This is the way they will write about an issue: "The 23,000-acre parcel conveyed by James Watt for clearcutting is located on the island's northwest coast." Yes, James Watt signed the document because he was the Secretary, and Congress said in section 506(c) that the Secretary will convey. Had Cecil Andrus been the Secretary, he would have signed the document, but they would not have put in there that Cecil Andrus conveyed 23,000 acres to clearcut; they wanted to do what they are really great at—take another cheap shot.

I probably should not say any more, or I will be in trouble.

Senator **MURKOWSKI**. You have about 2 more minutes.

Mr. **BAENEN**. I will take you up on that.

You asked Dr. Kaczynski about the relative cleanliness of the proposed log transfer facility. This is the decision of the hearing officer for the Department of Environmental Conservation for the State of Alaska on their hearing as to whether or not this facility would comply with the coastal zone management and the water quality standards of the State of Alaska.

After about a year's delay, we went to trial. They presented absolutely no scientific evidence. The result was a determination that the proposed facility may well be a prototype for all of such facilities in southeast Alaska. But they managed to cause a year's delay, and they watched Shee Atika die on the vine, probably gleefully; I do not know.

[The prepared statement and attachments follow. Testimony resumes on p. 243.]

PREPARED
STATEMENT OF
RICHARD ANTHONY BAENEN
SUBMITTED TO THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
IN CONJUNCTION WITH ITS
OVERSIGHT HEARINGS OF NOVEMBER 2, 1983

My name is Richard Anthony Baenen, and I am a partner in the law firm of Baenen, Timme, De Reitzes & Middleton. I have represented Shee Atika, Inc., since the spring of 1979 in its efforts to enjoy the benefits of the 1971 Alaska Native Claims Settlement Act.

I have practiced law in the District of Columbia since the fall of 1962. Roughly 90 percent of my professional activities since that time have involved the representation of Native Americans, predominantly Indian Tribes in the Lower 48 and Native Corporations in Alaska formed pursuant to the Alaska Native Claims Settlement Act. In all of my years of such representation, I have never seen a situation such as Shee Atika's, where a national environmental group seeks to destroy a Native group.

The Committee is holding these hearings, as I understand it, to determine why Shee Atika is not enjoying the benefits of the Alaska Native Claims Settlement Act.

I can answer that question without hesitation or qualification -- because of the unrelenting efforts of the Sierra Club.

It is imperative that the Committee understand that Shee Atika's inability to enjoy the benefits of the Alaska Native Claims Settlement Act is attributable solely to the work of the Sierra Club, which has taken it upon itself to thwart the will of Congress. The Sierra Club has and will do everything it can to preclude any commercial timber harvesting on Admiralty Island. In effectuating this policy, the Sierra Club seeks to prevent Shee Atika from harvesting the timber granted to it by Congress as Shee Atika's entitlement under the Alaska Native Claims Settlement Act. This will either force Shee Atika to close its doors or drive Shee Atika into bankruptcy. If either should occur, the Sierra Club will have achieved its goal of no timber harvesting on Admiralty, but it will have done so without regard to the over 1,900 Native shareholders of Shee Atika, Inc., and at their expense. If the Sierra Club succeeds, Shee Atika will be the first Native corporation to end without having had any use of its Settlement Act entitlements, or given its shareholders any benefits.

To put it simply, a national conservation organization is using its very substantial resources to destroy an unfunded group of Native Americans.

The Sierra Club Goal

The Sierra Club has for many years sought to preclude any timber development on Admiralty Island. In 1971, by enactment of the Alaska Native Claims Settlement Act, Congress provided that the Natives of the village of Angoon, on Admiralty, would receive 23,000 acres of Island land, as part of their entitlement under the Settlement Act. Shortly thereafter, in a 1973 publication, the Sierra Club proposed that there be no commercial timber harvesting on Admiralty Island, and suggested that, to the extent the Natives of the Village of Angoon would own timberlands pursuant to the provisions of the Settlement Act, a perpetual lease of the harvesting rights be secured by the United States, with payment for the rights made to the Natives over a period of time, as if the timber were being harvested ("Alaska Geographic," Vol. 1, No. 3). In this manner, there would be no commercial harvesting on the Island but the Natives would enjoy the economic benefits of the Settlement Act.

Shee Atika and Goldbelt, Inc., the corporation formed under the Settlement Act for the Natives of the Juneau area, selected their Settlement Act lands on Admiralty pursuant to regulations promulgated by the Secretary of the Interior. These selections were challenged in federal court by the Sierra Club, Angoon and Kootznoowoo, the corporation for the Natives of Angoon.

The Sierra Club was determined to prevent any development on the Island, and that meant precluding any Native corporation from receiving land on the Island pursuant to the Settlement Act. It almost succeeded in that goal, for it managed to secure agreement to a provision in the Alaska National Interest Lands Conservation Act that permitted Kootznoowoo (the Settlement Act corporation formed for the Natives of Angoon) to exchange its Settlement Act land selections on Admiralty for timber lands on Prince of Wales Island. Kootznoowoo made the exchange and is now preparing to harvest the timber, so it can further share in the economic benefits of the Settlement Act.

But the Sierra Club was not 100% successful. While Goldbelt exchanged its selections on North Admiralty for lands on the mainland, Congress conveyed to Shee Atika, Inc., as its land entitlements under the Settlement Act, the lands previously selected by Goldbelt. The Sierra Club, and other groups, lobbied strenuously against Congress placing Shee Atika on North Admiralty Island, but they lost. All of this was accomplished through enactment of Section 506 of Public Law 96-487, the Alaska National Interest Lands Conservation Act of 1980.

By that Act, Congress also established the Admiralty Island National Monument. The Monument encompasses approximately 980,000 acres.

The Sierra Club, however, was not willing to give up its goal of no harvesting of timber on Admiralty Island. As a result, as detailed in Attachment A to my statement, it has adopted a policy of challenging legally every conceivable action relating to Shee Atika's presence on the Island, without regard to the merits of any issue, and it can be assumed that it will continue to do so. The result has been financial disaster to Shee Atika, and it may result in the closing of its doors and/or bankruptcy court.

In an effort to destroy Shee Atika as an operating entity, the Sierra Club twice has sent out national fundraising letters. The first was sent sometime in January, 1983, as nearly as we can determine. It is appended to this statement as Attachment B. The letter is very misleading, both by what it says and what it does not say. For example, it does not inform the reader that Shee Atika is a Native corporation and that it seeks to harvest timber on private land conveyed to it by the United States in settlement of its land claims pursuant to the Alaska Native Claims Settlement Act.

The letter also states that the Sierra Club Legal Defense Fund "commissioned scientific experts" to study the proposed log transfer facility and that the experts "found that construction and operation of the log transfer terminal would render Cube Cove useless as a haven for young salmon and as a habitat for Dungeness and King crab." The letter stated further, "simply put, their report stated such an operation would 'irreversibiy' degrade water quality and decrease the ability of Cube Cove to support live."

As detailed in Attachment A to this statement, when the issue of the proposed log transfer facility finally went to hearing before a hearing officer of the Alaska Department of Environmental Conservation, the Sierra Club not only was unable to prove any of its allegations, but it was unable to present any credible scientific evidence. The result was a holding against the Sierra Club on all issues. Simply put, the Sierra Club did not have any "scientific evidence"; it did not and cannot show that the operation would "irreversibly degrade water quality and decrease the ability of Cube Cove to support life"; it did not and cannot show that the construction and operation of the log transfer facility would "render Cube Cove useless as a haven for young salmon and as a habitat for Dungeness and King crab."

In addition, the proposed development will not result in plans "to clear the shores at Cube Cove." This the Sierra Club well knew when the letter was written, for it had seen the design proposal. The Cove has approximately 2 miles of linear shoreline and less than 1,000 feet will be used by the facility. One thing was not misleading, however. In the final paragraph of the section relating to Admiralty Island the Sierra Club made its intentions concerning Shee Atika's presence on that Island abundantly clear. The paragraph reads:

> "The value of Admiralty's natural resources are inestimable and we simply can't let up in our fight to save the Island. We must do everything we can to keep it as it has been for 10,000 years . . . ." (January 1983)

Further evidence of the Sierra Club's ultimate goal is found in the transcription of an interview by Station KCAW of Sitka on or about January 28, 1983, with an attorney for the Sierra Club Legal Defense Fund. The interview was generated by the fact that a new lawsuit had been filed seeking to preclude development on the Island in which the Sierra Club had intervened as a plaintiff. During that interview, the Sierra Club attorney stated the following:

> ". . . . Because of this, the Sierra Club and the Wilderness Society have worked with the Natives of Angoon since at least 1968 to preserve the Island as Wilderness. These national groups have joined today to offer their support for as long as it takes to win the battle to preserve Admiralty."

That same attorney, when interviewed by CBS News in a broadcast aired in July 1983, stated:

> "We are willing to do everying we possibly can to help them [Shee Atika] achieve these goals [harvest timber] as long as they do it somewhere other than Admiralty Island."

The same attorney sent out another fundraising letter, sometime late this summer. It is appended as Attachment C to my statement.

This letter is a variation of the earlier fundraising letter. It repeats the assertions that unless the Sierra Club

Legal Defense Fund receives help "we could very well lose some of the most beautiful land on Earth and witness the deterioration of pristine wildlife habitat. All in the course of surrendering America's last great wilderness to the bulldozers and chainsaws of the careless developers." The letter goes on to state that funds are sought to enforce the Alaska Lands Act and

> "protect this rightful heritage of all Americans from those who would drill, mine, log and otherwise destroy the face of the land and pollute its air and water."

The letter, in addressing Admiralty Island, repeats the misleading statements of the first letter. Yet this letter was written after the determination by the Alaska Department of Environmental Conservation that all those allegations of environmental damage were found to be completely unsupported.

The letter then recited that the Sierra Club had secured an injunction against Shee Atika's proposed transfer of logs by helicopter to the waters of Chatham Strait. As detailed in attachment A to my statement, when the Court finally received all of the evidence, it dissolved the injunction and found the operation would not produce the effects alleged. We know, however, that this fact will never be brought to the public's attention. The Sierra Club does not deal in "unfavorable" facts.

The policy of the Sierra Club is clear. Drive Shee Atika off Admiralty and drive Shee Atika into bankruptcy and "save" Admiralty Island from Shee Atika who would "otherwise destroy the face of the land and pollute its air and water." The question might be asked of the Sierra Club if it has in any way challenged its ally Kootznoowoo's plans to build a log transfer facility at Dolomi Bay, at the mouth of a major salmon spawning stream, to assist it in the harvest of its Settlement Act timber on Prince of Wales Island?

Bluntly put, Shee Atika has yet to enjoy the benefits of the Settlement Act solely because of the Sierra Club and the allies it has recruited.

ATTACHMENT A

November 1, 1983

MEMORANDUM

TO: Senate Select Committee on Indian Affairs

FROM: Baenen, Timme, De Reitzes & Middleton

RE: Oversight Hearings on Shee Atika, Inc.,--History of Litigation by the Sierra Club and Angoon Against Shee Atika, Inc.

This memorandum will detail the numerous legal challenges brought by the Sierra Club, the City of Angoon and Kootznoowoo against Shee Atika, Inc., in its efforts to obtain the benefits it is entitled to under the Alaska Native Claims Settlement Act (ANCSA).

I. Litigation Surrounding Shee Atika's Original Land Selections at Hood Bay, Admiralty, Island.

The history of the Sierra Club and the City of Angoon's efforts to prevent Shee Atika from obtaining the benefits it is entitled to under ANCSA date back to 1974, shortly after the corporation was formed. The basis for Shee Atika's land entitlement is found in §14(h)(3) of ANCSA, which provides in pertinent part:

> The Secretary may withdraw and convey to the Natives residing in Sitka, Kenai, Juneau, and Kodiak, if they incorporate under the laws of Alaska, the surface estate of lands of a similar character in not more than 23,040 acres of land, which shall be located in reasonable proximity to the municipalities.

> The subsurface estate in such lands shall be conveyed to the appropriate regional corporation unless the lands are located in a wildlife refuge.

Unlike the other village and regional corporations, the four "urban" corporations for Sitka, Juneau, Kenai, and Kodiak, did not share in the approximately one billion dollar ($1,000,000,000) judgment fund established under ANCSA. Rather, their entitlement in settlement of the aboriginal claims which they relinquished was 23,000 acres of land.

The Secretary of the Interior, to implement §14(h)(3), promulgated regulations establishing the procedures for selecting lands by the four urban Native corporations. Those regulations provided that the four urban Native corporations were to nominate 92,000 acres of land within a 50 mile radius of their city which were similar in character to the lands in which the cities were located. After review and public hearings, the Secretary was to withdraw 46,000 of the acres nominated. The Native corporations could then select their 23,000 acres from the lands nominated. The Secretary was mandated to convey the area selected.

Shee Atika had two goals in mind as it began to look for lands. A substantial portion of Shee Atika's shareholders reside in Sitka and other southeast communities. The unemployment rate for Natives in southeast Alaska is very high and affects severely Shee Atika's shareholders. Because Shee Atika received no monies under ANCSA, its survival is dependent upon lands which would generate an economic base for the corporation. Economically valuable lands would not only insure the survival of the corporation, but would allow it to pay dividends to its shareholders, many of whom were unemployed. Shee Atika also wished to select lands which would allow it to engage in activities which would provide jobs and training for its shareholders. As many of its shareholders are employed in commercial fishing industry, and many more engage in subsistence activities, Shee Atika wished to avoid selecting lands which were valuable wildlife habitat, or which surrounded important salmon streams with high escapements.

In addition to economic and environmental considerations, Shee Atika also wished to select lands which were of some historic and cultural significance to its shareholders.

A substantial portion of the Tongass National Forest in Southeast Alaska is committed to two major timber companies, Alaska Lumber and Pulp and Louisiana Pacific-Ketchikan, as a result of two long term timber sales contracts with these corporations entered into by the federal government in the 1950's. Any land within the cutting areas established by those contracts would have had to be taken by Shee Atika subject to those contracts. This would have effectively eliminated Shee Atika's use of the lands for the duration of the long-term contracts, thereby precluding the corporation from developing the land in a manner which would benefit the corporation and its shareholders.

The land available to Shee Atika within a 50-mile radius of Sitka which was not part of the Alaska Lumber and Pulp's long-term timber sale contract was relatively small, and consisted mostly of glaciers and mountain peaks. Shee Atika did identify some land which it wanted to select in the Chichagof-Yakobi area. However, this land had been picked out by the various environmental groups in Southeast Alaska as being suitable for inclusion in the wilderness system. These groups requested that Shee Atika not select these lands, but allow them to be preserved as wilderness. Shee Atika, in the interests of being a good neighbor, acceded to these requests.

Sometime during 1974, both Shee Atika and Goldbelt, the corporation for the Natives of Juneau, Alaska, were approached by Angoon to consider the possibility of selecting lands on Admiralty Island. It was proposed that Shee Atika and Goldbelt select lands adjacent to those lands surrounding the village of Angoon which Angoon would be required to select under the terms of the Settlement Act. Shee Atika and Goldbelt reviewed those lands, and included them in the 92,000 acres of land which they nominated for the Secretary of the Interior. Kootznoowoo then partially changed its mind, and registered with the Secretary of the Interior its objection to having Shee Atika select lands at Chaik Bay, and Goldbelt select the lands at Mitchell Bay. While the matter is now disputed, the record shows that Kootznoowoo and Angoon indicated that they had no objection to Shee Atika selecting lands in the Hood Bay region of Admiralty Island, and no objection to Goldbelt selecting lands in the Cube Cove area of North Admiralty Island. The Secretary withdrew the Hood Bay lands for selection by Shee Atika, and the North Admiralty lands for selection by Goldbelt. Those lands were then selected by the respective Native corporations.

Goldbelt and Shee Atika did file a lawsuit against the Secretary of the Interior for failing to withdraw the Mitchell Bay and Chaik Bay lands, but quickly dismissed those suits and joined the Secretary of the Interior in his defense against the lawsuits brought by Angoon and the Sierra Club challenging the Hood Bay and North Admiralty Island selections respectively. The Sierra Club alleged the Secretary had no authority to withdraw the selected lands and failed to prepare an environmental impact statement before making the withdrawals.

Goldbelt, Inc., ultimately exchanged its land selections on North Admiralty Island for land on the mainland. Shee Atika considered then the possibility of seeking the former Goldbelt lands, in order to remove itself from the vicinity of Angoon and the latter's concern over the effect of logging at Hood Bay on subsistence. In light of the Department of the Interior's then professed desire to exchange all Admiralty Island land selections for other lands in southeast, Shee Atika requested the Forest Service to propose lands of equal or greater value off Admiralty Island which would be suitable for exchange. The Forest Service accordingly delineated certain lands in the Chuck River Drainage area on the southeast mainland.

Shee Atika, with the aid of a forestry consultant, undertook an analysis of the comparative values of the exchange lands proposed by the Forest Service, the Hood Bay lands, and the North Admiralty lands. This analysis showed that of the three areas in question, the North Admiralty Island lands were the least sensitive environmentally. Unlike both the Hood Bay and the mainland lands, there are no catalogued salmon streams which flow through the North Admiralty lands. Indeed, the lands proposed by the Forest Service on the mainland included one of the major salmon spawning streams in Southeast Alaska. The North Admiralty Island lands, because they were located away from the coastline, also did not include prime eagle habitat, as did the Hood Bay and mainland lands. Finally, the North Admiralty lands are located in an area which was not generally viewed as prime wildlife habitat.

A comparison of the timber values indicated that the relative value of the timber, after subtracting reasonable operational costs, was approximately equal on the North Admiralty and Hood Bay lands, with the Hood Bay lands considered the more valuable of the two. The mainland lands, however, were less than half the value of the Hood Bay or North Admiralty lands. This was due to both a lower quality of timber, resulting from a harsher climate and poorer soil conditions, as well as substantially increased operational costs. For example, much of the land designated by the Forest Service would not be operable using conventional methods, and at least five log transfer facilities would have been required in order to remove the timber. Conversely, on Shee Atika's North Admiralty lands, almost all of it may be conventionally logged, and only one log transfer facility is needed.

Although the Hood Bay lands and the North Admiralty lands were essentially equal in timber values, the Hood Bay lands were consistently rated by the Forest Services as having a greater environmental value than the North Admiralty lands. In addition, the Hood Bay lands were significantly closer to Angoon. For these reasons, Shee Atika urged Congress to resolve the litigation over its Settlement Act selection by placing it in the North Admiralty area.

The North Admiralty lands were proposed by Shee Atika for specific reasons. As discussed above, there are no catalogued salmon streams on Shee Atika's property, and the visual integrity of the island was protected by a buffer strip approximately one to two miles wide along the entire area, with the exception of Cube Cove. This one saltwater access point was needed in order to construct a log transfer facility to remove the logs. Cube Cove was chosen as a site for the log transfer facility because it has no salmon streams which empty into it, and it is not an important or widely used subsistence area.

The analysis performed by Shee Atika demonstrated conclusively that there were no alternate lands in Southeast Alaska available for exchange by Shee Atika which were of equal or greater value to the Hood Bay lands which it had selected. Congress, by section 506(c) of the Alaska National Interest Lands Conservation Act (ANILCA), provided that Shee Atika was to receive the former Goldbelt selections on North Admiralty Island as its ANCSA lands.

The Sierra Club, Angoon, and Kootznoowoo vigorously lobbied against confirming Shee Atika's ANCSA entitlements on North Admiralty Island. The basis of their opposition was that Shee Atika's proposal would allow it to log 23,000 acres of land on the Island, and to otherwise develop it as private land. This was in direct contradiction to the Sierra Club's desire to see the entire

Island preserved as a national monument and wilderness. As discussed below, however, the Sierra Club, after losing before Congress, conveniently abandoned this interpretation of Congress's action, and suddenly began arguing that Congress did not convey to Shee Atika private land at all, but rather only the right to manage its 23,000 acres as a wilderness and national monument, not for the benefit of Shee Atika's shareholders, but for the benefit of the public and the Natives of Angoon.

II. Litigation Concerning Shee Atika's Title to the North Admiralty Island Lands.

A. The Battle Over Easements.

Section 506(c) of ANILCA ordered the Secretary of Agriculture to designate certain easements across Shee Atika's land, and the Secretary of the Interior to include those easements in the conveyance documents. The section states, in pertinent part:

> In the instrument of conveyance provided for in paragraph 1, the Secretary of the Interior shall reserve such easements as are described in §17(b)(1) of the Alaska Native Claims Settlement Act, as the Secretary of Agriculture may designate for public access to and utilization of the adjacent federal lands. (emphasis added)

Pursuant to this directive, the Secretary of Agriculture began his determination of what easements should be designated. Public hearings were held on the question, and an environmental assessment was prepared.

In the midst of this process, counsel for Shee Atika received a telephone call from the Sierra Club and a complaint alleging that the Secretary of Agriculture did not intend to designate any easements across the land, and that the Secretary of the Interior proposed to execute the conveyance without receiving any comment from the Department of Agriculture on easements. Since this was directly contrary to what the Departments of Agriculture and Interior were in fact doing, counsel for Shee Atika inquired of counsel for the Sierra Club as to whether they had called the Departments of Agriculture and Interior to confirm the rumor they had heard. Counsel for Shee Atika was curtly informed that the Sierra Club did not "trust" these agencies, and therefore there was no point in even asking them. To straighten out this matter, counsel for Shee Atika was forced to contact the Sierra Club's local counsel, explain the entire conveyance procedure to them, give them the telephone numbers of the individuals within the Bureau of Land Management who would be handling the conveyance, and request the Bureau of Land Management to put the Sierra Club on the list of persons to whom the draft interim conveyance would be mailed.

In fact, the Sierra Club submitted timely comments to the Department of Agriculture on the proposed easements. In addition, the Department of Agriculture held public hearings on the proposed easements in both Angoon and

Juneau. As a result of the public input, several additional trail easements were designated.

The comments of the Sierra Club on the proposed easements indicated for the first time to Shee Atika that the Sierra Club would go to any lengths to harass Shee Atika and delay its receipt of its lands. In 1978, the Bureau of Land Management promulgated regulations specifically dealing with the designation of easements on Native lands. Those regulations specifically provide that no public easements shall be reserved to hunt or fish from or on the lands conveyed pursuant to the Act. Easements may be reserved along major waterways only to provide short portages or transportation routes around obstructions. Reservation of easements on the basis of subsistence use of the lands of one village by the residents of another village are expressly prohibited. The regulations specifically provide that trail easements shall be no wider than 25 feet if the use is to be accommodated is for travel by foot, dogsleds, animals, snomobiles, two and three wheel vehicles, and small all terrain vehicles. Existing road easements may be no more than 60 feet, and for proposed roads no more than 100 feet. One hundred feet is the maximum for any easement. With respect to site easements, they are to be for temporary camping and loading or unloading at a trail head, where there is a demonstrated need to provide transportation to publicly owned lands or major waterways. This temporary camping is limited to 24 hours. The regulations specifically provide that site easements shall not be reserved for recreational uses. The Sierra Club never challenged these regulations when promulgated.

The Department of Agriculture followed these regulations in proposing easements across Shee Atika's land. The Sierra Club, however, completely disregarded these regulations, and demanded that the Department of Agriculture and Interior propose easements which were directly prohibited by the regulations. For example, the Sierra Club argued that that all easements should be 200 feet in width, but that all motorized vehicles should be prohibited upon them. The Sierra Club objected to the requirement that camping or site easements be limited to 24 hours, even though that is expressly provided in the regulations. Although the regulations specifically provide that no easements are to be reserved to hunt or fish from the conveyed lands, the Sierra Club requested linear easements around all of the lakes on Shee Atika's property as well as Cube Cove, to allow the public to camp, hunt, and fish upon these lands. The Secretary of Agriculture, recognizing that the Sierra Club's allegations were totally without merit, rejected them.

B. Appeals to the Alaska Native Claims Appeal Board (ANCAB) and the Interior Board of Land Appeals (IBLA).

In their first major attack on Shee Atika's entitlements since the passage of ANILCA, the Sierra Club and the City of Angoon both filed appeals to the Alaska Native Claims Appeal Board (ANCAB) challenging the conveyance. Notwithstanding the fact that the Secretary's decision to convey expressly stated that the decision could be appealed to the Alaska Native Claims Appeal Board, the Sierra Club also filed an appeal with the Interior Board of Land Appeals (IBLA). The notices of appeal filed in the ANCAB and IBLA appeals were identical. The Sierra Club then petitioned both ANCAB and IBLA to sever and refer the various issues raised in their statements of facts, according to their respective jurisdictions, but made absolutely no attempt to delineate which issues it felt were properly before ANCAB and which issues properly before IBLA. The Sierra Club also filed a petition to intervene in Angoon's ANCAB appeal, and Angoon filed a motion to consolidate its appeal with that of the Sierra Club.

The Department of Interior's regulations governing appeals from Native conveyances are simple and straightforward. Those regulations provide that any person who claims a property interest in land affected by a determination may appeal. (43 C.F.R. §4.902 (1980).) The Notice of appeal must be filed within thirty (30) days of the decision to issue the conveyance. The appellant has thirty (30) days thereafter to file a statement of facts and reasons in support of his notice of appeal. During this time, the appellant must also file a statement of facts demonstrating that it has the proper property interest to give it standing to appeal. The appellee then has thirty (30) days to respond to the statement of facts and reasons. No other briefings or hearings are allowed without leave of the board.

Notwithstanding the simple procedure, the Sierra Club and the City of Angoon went out of their way to create the largest possible procedural morass, to the end that Shee Atika's conveyance would be delayed for as long as possible. To this end, as discussed above, the Sierra Club filed identical appeals with ANCAB and IBLA, requested each board to sever and refer issues to the other board, without delineating in any way which issues ought to be severed and referred. Although the Sierra Club's statement of facts and reasons indicated that it opposed the conveyance because it would allegedly adversely affect the rights of its members to use Admiralty Island, and in particular Shee Atika's land, for recreational purposes, and the City of Angoon opposed it expressly because the conveyance would interfere with its resident's subsistence rights on these lands, the Sierra Club moved to intervene in Angoon's appeal, and

Angoon moved to consolidate the two appeals, on the grounds that the issues were identical.

Notwithstanding the fact that two public hearings had been held on the question of what easements should be designated across Shee Atika's land, one in Angoon and one in Juneau, Angoon requested ANCAB to hold hearings on the use of Shee Atika's lands for subsistence activities by the Natives of Angoon, and the easements which would be necessary to accommodate that use. This request was a wholly dilatory tactic for a number of reasons. First, as discussed above, easement regulations specifically preclude the reservation of easements to accommodate the subsistence needs of one village on the lands belonging to another village. Second, the people of Angoon, at the public hearing in their village, had ample opportunity to discuss this question and present their opinions on these issues. Instead, however, at the public hearing in Angoon, the people refused to talk about easements, and instead voiced their continued objection to Shee Atika's land selections on Admiralty Island. Notes from the hearing by government personnel make it clear that many of those who testified from Angoon had no idea where Shee Atika's land selections were--statements were made about the importance of Chaik Bay, Basket Bay, and similar areas to the people of Angoon. These areas are all located at least forty (40) miles away from Shee Atika's selection. The president of Kootznoowoo stated that Kootznoowoo could not make any statements at the hearing because its board had not reevaluated its lawsuit against Shee Atika's Hood Bay lands in light of ANILCA. One would think that a matter of such allegedly pressing importance to the people of Angoon would have been considered by the board sometime in the six (6) months which had passed since the Act had been signed into law. The only statement on easements made at the hearing was by Matthew Fred, Jr., who stated "getting back to the easements; I don't see much use for them for subsistence purposes."

An analysis of the Sierra Club's bases for its appeal demonstrates that it was totally without merit. As a preliminary matter, it was abundantly clear that the Sierra Club had no standing to pursue its appeal. As discussed above, BLM regulations provide that only those individuals who claim a property interest in land affected by a decision may appeal. The Sierra Club could not and did not assert that it had any property interest in the land, but argued that it had standing because of the "interest" and "use" of Admiralty Island by its members. However, under the specific regulations, which had been upheld in numerous decisions by the board, this is insufficient to confer standing.

With respect to the merits, the Sierra Club argued that Shee Atika's lands were not conveyed pursuant to ANCSA, and that they were not private lands, but rather were monument and wilderness lands which were subject to the regulatory authority of the United States as public lands and must be managed as wilderness and monument. Specifically, the Sierra Club insisted that six (6) conditions be attached to the conveyance:

1. A condition that requires management as monument and wilderness according to the purposes of each;
2. A condition that prohibits timber harvesting;
3. A condition that the lands be left unimpaired for future use and enjoyment as wilderness;
4. A condition that the lands be administered for the use and enjoyment of the American people;
5. A condition that the lands are devoted to recreational, scenic, scientific, education, conservation, and historic use; and
6. A condition that prohibits commercial enterprises and permanent roads.

The above list contradicts the strenuous assertions made by the Sierra Club and others to Congress in the months preceding the passage of ANILCA that the passage of §506(c) would result in the existence of privately owned Native land on Admiralty Island on which a commercial timber harvesting operation could be conducted.

The Sierra Club also challenged the easements reserved in the conveyance. The Sierra Club asserted the trail easements needed to be wider to accommodate public access and use, but offered no documentation of either the amount of public use which was likely to occur, or why 25 foot easements were insufficient to accommodate this use. In light of the fact that Shee Atika now has spent considerable time over the last two and one-half (2½) years on the property, and has never seen any recreational hikers, this claim was clearly spurious. The Sierra Club also alleged that additional easements were necessary for subsistence access and use, but failed to delineate what additional easements were necessary or why the existing ones were not sufficient.

Kootznoowoo, unlike the Sierra Club, took the position that the conveyance was proper, but asserted that they were entitled to adequate reservations and easements to protect the continued opportunity to engage in subsistence activities. No indication was given, however, as to why the easements which were reserved were inadequate to protect subsistence activities, or what additional easements would need to be reserved in order to satisfy Angoon's concerns. Kootznoowoo requested ANCAB to hold hearings on this issue, notwithstanding the fact that a public hearing had already been held in Angoon, and the residents had testified that the easements were not important for subsistence concerns.

In its statement of facts and reasons, Kootznoowoo sought to create the impression that Congress forced

Kootznoowoo to move off Admiralty Island, and that Kootznoowoo reluctantly agreed to do so only after extracting a Congressional agreement that their subsistence rights on Admiralty Island would be protected. Nothing could be further from the truth. The proposal to allow Kootznoowoo to select lands on Prince of Wales Island was proposed by and vigorously advocated by Kootznoowoo. The provision was accepted by Congress in deference to Kootznoowoo's desires.

As a direct result of the procedural morass which the Sierra Club and Angoon succeeded in creating by their various motions, the Secretary of the Interior, pursuant to valid departmental regulations, assumed jurisdiction over both appeals. Although all pleadings allowed under the relevant regulations had been filed, the Secretary's office gave each party an additional ten (10) days to file any other matters which they wished to bring to the Secretary's attention. Both the Sierra Club and the City of Angoon protested vigorously that this was not enough time. The transparency of their protestations was clearly evidenced, however, by the fact that the Sierra Club had agreed to file its final brief with ANCAB on the same day that its final brief was due to the Secretary. Moreover, notwithstanding its protestations, the Sierra Club managed to file a brief in excess of fifty (50) pages with the Secretary. Kootznoowoo also filed an additional brief, arguing vigorously that the conveyance was required to protect the subsistence opportunities of the Natives of Angoon, but giving no indication as to why the easements designated did not accomplish this, or what would need to be done to make the conveyance acceptable to Angoon.

The Secretary of the Interior, in his decision on the appeals, rejected all of the claims of the Sierra Club and the City of Angoon as completely baseless. First, the Secretary found that IBLA had no subject matter jurisdiction over the appeal, on the grounds that while the conveyance to Shee Atika was directed by ANILCA, it was in satisfaction of the land selection rights of Shee Atika under ANCSA. The Secretary then found that under ANCAB regulations, the Sierra Club, which had no property interest in the land in question, had no standing to bring the appeal. He also found that Angoon had no right to challenge the conveyance based its alleged aboriginal rights to the area.

Although he found that neither party had standing to bring the appeals, in the interests of judicial economy the Secretary went on to consider the various claims of Sierra Club and Angoon on the merits. The Secretary made short work of the Sierra Club's argument that ANILCA mandated that the conveyed land be managed as public lands within the national monument and wilderness, finding that ANILCA expressly precluded BLM from imposing the conditions suggested by the Sierra Club. The Secretary also rejected the Sierra Club's claims concerning easements, finding that the Secretary of Agriculture was specifically limited to designating easements which provided access to and utilization of the adjacent federal lands. Finally, with respect to the claims of Angoon, the Secretary found that §506(a)(2) of ANILCA guaranteed the residents of Admiralty Island's subsistence use only on the public lands on Admiralty Island. He further found that the lands conveyed to Shee Atika did not remain in the public domain after conveyance, and that therefore §506(a)(2) did not preserve subsistence use opportunities for the Natives of Angoon on those lands.

C. Litigation Over Title.

Approximately four (4) months after the Secretary issued his decision and conveyed the lands to Shee Atika by patent and interim conveyance, the Sierra Club brought suit against the Secretaries of the Interior and Agriculture challenging the conveyance. The complaint was filed in the United States District Court for the District of Columbia. Although the lawsuit sought to have both Shee Atika and Sealaska's conveyances declared null and void, neither Shee Atika nor Sealaska were joined as parties in the lawsuit. Indeed, the Sierra Club could not sue either Sealaska nor Shee Atika in the District of Columbia; in order to make them parties, the lawsuit would have had to have been brought in Alaska. The Sierra Club chose not to do so, and filed the case in the District of Columbia. Neither Kootznoowoo nor the City of Angoon are parties to the lawsuit, although, after one and one-half years, they have now sought to intervene.

The lawsuit challenges the conveyance on several grounds, none of which has any support in the law. All of them are directly contrary to the purposes and intents of Congress in confirming Shee Atika's Settlement Act entitlements on North Admiralty Island. The first series of claims made by the Sierra Club concerned §22(k) of ANCSA. Section 22(k) requires that lands conveyed to Native corporations which were formerly part of the national forest system must be managed according to the principles of sustained yield and under management practices for the protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands for a period of twelve (12) years. The Sierra Club first maintains that this twelve (12) year period commences not when ANCSA was passed, but when the Native corporation actually receives its conveyance. This interpretation is directly contrary to that taken by the Departments of the Interior and Agriculture, the two agencies charged with implementing §22(k). It is also contrary to the views articulated by Congress. (See Senate Committee on Energy and Natural Resources, Alaska National

Interests Lands, S. Rep. No. 96-413, 96 Cong., First Sess., at 261-262.)

Shee Atika's conveyance specifically states that it shall be subject to the requirements of §22(k) of ANCSA, and that until December 18, 1983, those portions of its lands located within the boundaries of the national forest shall be managed under the principles of sustained yield and under management practices for the protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands. This language is similar to the §22(k) language found in all other Native conveyances. The specific procedures for the implementation of §22(k) are set out in a Memorandum of Understanding and Plan of Action entered into between the United States Department of Agriculture, Department of Interior, and the State of Alaska. Since receiving title to its lands, Shee Atika has complied with the management restrictions and other requirements of the Memorandum of Understanding and Plan of Action.

Notwithstanding the fact that the language concerning §22(k) in Shee Atika's conveyance is similar to that of every other Native corporation whose lands are within the national forest, the Sierra Club chose to challenge only Shee Atika's conveyance. It argues that the conveyance is inadequate because it fails to specify that the principle of sustained yield and the management practices for protection and enhancement of environmental quality that apply on adjacent forest lands are found in the Alaska Lands Act, the Wilderness Act, the Multiple Use Sustained Yield Act, the National Forest Management Act, the regulations of the Forest Service, the Alaska Regional Plan, the Tongass Land Management Plan, the Southeast Alaska Area Guide, the Chatham Area Guide, the Forest Service Manual, and the Forest Service Timber Sale Contract for the Chatham Area. What the Sierra Club does not say is that the Forest Service, in developing the management restrictions which would apply on Native lands, as found in the Plan of Action, went through the above referenced statutes and regulations, and excerpted those which were applicable pursuant to §22(k). This claim is thus totally nonmeritorious.

The Sierra Club also asserts that the interim conveyance must provide that any violation of §22(k) will result in the forfeiture of the lands conveyed, and reversion of title to the United States. This Draconian measure has no basis in any law or regulation, and flies in the face of the intent of both ANCSA and ANILCA. It demonstrates the Sierra Club's total disregard for the rights of Native corporations, and in particular Shee Atika, and is illustrative of the frivolousness of its legal claims.

The Sierra Club also renews its claim that the easements designated are insufficient to protect the public access. As in the case of their appeal to the Secretary of the Interior, however, the Sierra Club provides absolutely no evidence or explanation as to why the designated easements are inadequate. The Sierra Club also alleges that the Secretary of Agriculture must impose easements to protect federal lands and waters from adverse environmental impacts such as soil erosion, water pollution, loss of fish and wildlife resources, and degradation of wilderness values caused by the activities of Shee Atika and Sealaska on their lands, as well as an easement to insure that the lands conveyed will continue to be managed as a national monument. How these easements fit within the allowable class of easements--easements for public access to and utilization of the adjacent federal lands--is not explained.

The Sierra Club's next claim is perhaps the best illustration of the Sierra Club's total contempt for the actions taken by Congress in confirming Shee Atika's settlement act entitlements on North Admiralty Island, and the most blatant demonstration of harassment. Citing §503(d) of ANILCA, which prohibits, subject to certain minor exceptions, the harvesting or sale of timber in the Admiralty Island National Monument, the Sierra Club argues that this is a "valid existing right" to which Shee Atika's conveyance is subject, and that therefore the conveyance must contain a prohibition of timber harvesting. Congress did not convey to Shee Atika national monument and wilderness lands. Congress conveyed to Shee Atika lands to be to held for use by the corporation for its economic betterment. Congress was well aware that Shee Atika planned to manage its lands as a commercial forest; indeed, that was precisely what the entire dispute between Shee Atika and the Sierra Club was about. For the Sierra Club to maintain otherwise is nothing short of pure hypocrisy. In addition, §103(c) of ANILCA specifically provides:

> Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which before, on, or after the date of enactment of this Act, are conveyed to the state, to any native corporation or to any private party shall be subject to the regulations applicable solely to public lands within such units.

This section makes it abundantly clear that Shee Atika's lands are not subject to the prohibition on timber harvesting which applies to the Admiralty Island National Monument lands .

Finally, the Sierra Club's claims that the National Environmental Policy Act required the Secretaries of Agriculture and Interior to develop alternatives to the conveyance and to the easements designated therein. This claim is also without merit and shows that the Sierra Club is harassing Shee Atika. Section 506(c) requires the Secretary of Agriculture to designate certain limited types of easements, and requires the Secretary of the Interior to convey the North Admiralty lands to Shee Atika subject to those easements. These are ministerial, nondiscretionary acts to which NEPA does not apply. In addition, §910 of ANILCA specifically states that the National Environmental Policy Act shall not be construed as requiring the preparation of an environmental impact statement for withdrawals, conveyances, regulations, orders, easement determinations or other actions which lead to the issuance of conveyances to Natives or Native Corporations. What the Sierra Club seeks is an environmental impact statement on Shee Atika's conveyance; that, however, is expressly precluded by §910. In addition, Section 506(c) provides that the Secretary "shall convey" to Shee Atika the North Admiralty Island lands. The Sierra Club argues an EIS is necessary because it may now show the availability of alternate lands that could be conveyed to Shee Atika, even though Congress directed these particular lands to be conveyed.

The Department of Justice, shortly after the lawsuit was filed, moved to dismiss the lawsuit, or, in the alternative, transfer it to the United States District Court for the District of Alaska, in order that Shee Atika and Sealaska, the real parties in interest, could be brought into the lawsuit. Because neither Sealaska nor Shee Atika engage in business within the District of Columbia, they are not subject to jurisdiction of the District Court here. For reasons unknown to Shee Atika, however, this motion has been pending before the court for 14 months. We understand now that the motion is scheduled for argument on December 2, 1983. Until this issue is resolved, the lawsuit cannot go forward.

In June of 1982, the Sierra Club filed a lis pendens on Shee Atika's property in the Juneau Recording District. This filing puts anyone on notice who checks Shee Atika's land titles that a lawsuit is pending seeking to void those titles. The lis pendens has made it impossible for Shee Atika to obtain title insurance, which in turn is necessary in order for Shee Atika to obtain corporate financing. Since its inception in 1974, Shee Atika has lived on borrowed funds. That Shee Atika continues to exist is due solely to the generosity of its creditors, which have avoided placing demands on the corporation which would force it into bankruptcy.

Because the allegations raised by the Sierra Club in its lawsuit are totally frivolous, but have had the effect of precluding Shee Atika from obtaining desperately needed financing, Shee Atika approached Congress last fall and sought confirmation of its title to the North Admiralty lands. The Senate Committee on Appropriations, in its consideration of H.R. 7356, the Appropriation Bill for the Department of the Interior for fiscal year 1983, adopted the following language:

> Section 315. Provided, that the titles conveyed by and the easements and restrictions imposed by the Secretary of the Interior, pursuant to §506(c) of P.L. 96-487, are hereby [sic] confirmed in all respects.

The rationale for the committee's decision was articulated in the committee report. That report states:

> The Committee has also included bill language that provides that the titles conveyed by the Secretary of the Interior to Shee Atika, Inc. is [sic] confirmed in all respects. By §506(c) of P.L. 96-487, Congress directed title to certain lands be conveyed to Shee Atika, Inc. Congress intended to settle pending litigation concerning the validity of certain withdrawals pursuant to the Alaska Native Claims Settlement Act. It was noted that Shee Atika received no funds under the Settlement Act, because of the lawsuit had not yet received its land entitlements and without a legislative solution Shee Atika could go bankrupt. (S. Rept. No. 96-413, pp. 214-215). Title was conveyed to Shee Atika on December 9, 1981. A new lawsuit has been filed by one of the parties to the original litigation challenging the conveyance, even though §506(c) provides that the Secretary "shall convey subject to valid existing rights and any easements designated by the Secretary of Agriculture" the lands involved.
>
> The lawsuit clouds Shee Atika's title. Thus, two years after §506(c) was enacted, Shee Atika still faces bankruptcy because it cannot utilize its title for security. The purpose of this provision is to make it clear that the title conveyed pursuant to §506(c) is valid, conveyed pursuant to the settlement act and that the land is to be developed by Shee Atika for its economic growth and stability.
>
> Shee Atika has approximately nineteen hundred (1,900) Native shareholders. The settlement act was passed in 1971. Congress stated that the settlement "should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of the

> Natives, without litigation...." This provision is designed to accomplish that. (emphasis added.)

The Committee's amendment was adopted by the Senate.

In conference, an amendment was made to the section making it clear that the Secretary's decision and Congress' confirmation thereof were fully in accord with ANCSA and ANILCA. The revised section stated: "The titles conveyed by and the easements and restrictions heretofore reserved and imposed by the Secretary of the Interior pursuant to Section 506(c) of Public Law 96 - 487 are hereby confirmed in all respects: Provided, That nothing herein shall be deemed to amend the Alaska National Interests Lands Conservation Act or the Alaska Native Claims Settlement Act." Senator Stevens, one of the members of the Conference Committee, explained why the additional language was added:

> As a member of the conference, it is my understanding that that provision was added to make it clear that our action in legislating away the lawsuit was in keeping with the intentions and provisions of the Settlement Act and the Alaska National Interests Lands Conservation Act.

Senator McClure, also a member of the Conference Committee, had this to say about the provision:

> "The purpose behind the provision is to render the pending lawsuit and all of the claims that are made therein, moot, because those claims and allegations run contrary to the purposes and provisions of the Alaska National Interests Lands Conservation Act and the Alaska Native Claims Settlement Act and the actions taken by the Secretaries of Agriculture and the Interior pursuant thereto. If their actions had not

> been in compliance with those acts, we would not have taken the action we did, for we would not approve conveyances to Shee Atika, and the restrictions and easements, imposed thereon, if those conveyances, easements and restrictions were in violation of either the Alaska Native Claims Settlement Act or the Alaska National Interests Lands Conservation Act. However, since those conveyances and easements and restrictions are in full compliance in all respects with the provisions of those acts, it was intended to confirm those conveyances, easements, and restrictions in all respects, as being in compliance to the maximum extent possible with the Alaska Native Claims Settlement Act and the Alaska National Interests Lands Conservation Act. We accepted the language of the House conferees because it makes absolutely clear that what was conveyed was in full compliance with the acts and there was nothing more the Secretaries should do, or for that matter, could do under any law. Shee Atika now can move forward to develop its lands commercially, for economic stability and growth."

When Section 315 was signed into law, Shee Atika wrote a letter to the Sierra Club, requesting them to withdraw the lis pendens in light of Congress' action. The lis pendens has not been withdrawn, however, and no response has been received from the Sierra Club.

III. Litigation Concerning Permits Needed by Shee Atika To Construct and Operate a Log Transfer Facility At Cube Cove.

As was stated earlier, Shee Atika chose only one salt water access point on its property in order to allow the maximum amount of coastline to be retained in federal ownership for the benefit of all. Cube Cove was selected as the access point because preliminary analyses by both Shee Atika and state resource agency personnel had determined that this was an acceptable site for a log transfer facility.

Before detailing the numerous challenges which the Sierra Club and the City of Angoon have raised to this proceeding, it is important that the Committee know certain and facts about Cube Cove. First, as Dr. Kaczynski, a noted fisheries biologist and environmental scientist who works for CH_2M Hill, a consulting firm retained by Shee Atika, has testified, Cube Cove is not a biologically significant area. Early on in the process of receiving necessary state and federal permits so it could construct a log transfer facility at Cube Cove, Shee Atika employed CH_2M Hill as environmental consultants to study the Cube Cove area and its proposed log transfer facility design, and to advise the corporation as to the ecological significance of the area, and measures which could be employed by the corporation to reduce environmental impacts. As their first order of business, CH_2M Hill, as it routinely does for all clients who have request that it perform environmental analyses, reviewed all literature pertinent to the Cube Cove area. From this literature review, coupled with a relatively brief site visit, CH_2M Hill prepared an environmental review of the proposed project. From this review it concluded that Cube Cove was not a biologically significant area, that the log transfer facility would have no significant adverse environmental impacts, and that further study of the area was not needed in order to accurately assess the impacts of the proposed facility.

When it became clear to Shee Atika that the Sierra Club and the City of Angoon would do all that they could to prevent Shee Atika from obtaining the necessary permits, and would challenge at every opportunity those permits which were issued, Shee Atika requested CH_2M Hill to undertake water quality and biological studies of the Cube Cove area. CH_2M Hill opposed these studies on the grounds that they were unnecessary. Mr. Pita, Project Manager for CH_2M Hill, testified subsequently that Shee Atika had spent more money evaluating the impact of the log transfer facility than the State of Washington spent evaluating the impact of the Northern Tier Pipeline on the entire state.

As requested, however, CH_2M Hill undertook detailed water quality, oceanographic and biological investigations of Cube Cove and five other coves along the western shore of Admiralty Island between Hawk Inlet to the north of Cube Cove and Angoon to the south. The details of these studies will be presented to the Committee under separate cover. In general, however, the results of these field studies confirmed the earlier conclusions reached in the Environmental Review. CH_2M Hill found that there was no significant difference in the water quality of Cube Cove and any of the surrounding coves which they studied, and no significant difference in the water quality between all of these coves and the waters of Chatham Strait. Thus, contrary to the claims of the Sierra Club, there is nothing unique about Cube Cove. The water quality of all of these areas was within the water quality standards established by the State of Alaska, with the exception of the oil and grease standard, which, due to natural oils present in the environment, exceeded the standard.

The water quality study, in conjunction with oceanographic studies also conducted at Cube Cove, demonstrated that Cube Cove had a very high flushing rate, on the order of a complete exchange of water in the cove every 36 hours.

The biological resources of Cube Cove were generally similar to those found in the other coves. However, because Cube Cove has no salmon streams which enter into it, no salmon were observed in the cove, and the eagle population was less than that which would typically be found in areas such as Jim's Cove, which did have a salmon stream.

The biological assessment also revealed that of the 15 major types of marine food items preferred by the subsistence users in the Admiralty Island area, 10 were rare to absent in Cube Cove: Red Sea Ribbon, Black Seaweed, Pacific Salmon, Rockfish, Pacific Cod, Heart Cockle, Black Chiton (Gumboot), Pacific Herring, Harbor Seal, and Northern Sea Lion; two were considered common: Hardshell Clam and Pacific Halibut; one was considered abundant, Bay (Blue)

Mussel; while the relative abundance of the remaining two was variable: Dungeness Crab varied from abundant to rare and King Crab varied from common to absent.

Cube Cove is also not a major area of subsistence activities by the residents of Angoon. Since it obtained title to the property in December of 1981, Shee Atika has never observed anyone engaging in subsistence activities either in Cube Cove or on the remainder of its property. Shee Atika personnel have had representatives on its property for major periods of time, including during the summer fishing months and the winter hunting season, and yet have observed no one. Nor has Shee Atika or its representatives ever observed any indications of recent human presence on its land, i.e., campfires or similar signs. Shee Atika has instituted a free-use permit system for its lands, and although the free applications were mailed to the City of Angoon, Shee Atika has not received one request for such a permit from Angoon. Shee Atika personnel have been consistently in the Peanut Lake and Cube Cove area since June of 1983 up to and including the present time, and have observed no subsistence activities. Indeed, no residents of Angoon have traveled to the area at all, with the exception of two residents who came to Cube Cove specifically to inquire about employment opportunities.

Recreational use of the area has also been extremely limited. In the period of time discussed above, Shee Atika has observed only two recreational hunters on or in the vicinity of its property. Shee Atika has received two requests for free-use permits from recreationalists, one from a fisherman in Southeast, and the other from a resident of Oregon.

Shee Atika also has talked with airline charter services in Southeast and has been uniformly informed that these individuals, in their flights over Cube Cove, have not seen anyone engaged in subsistence or recreational activities on these lands.

With this background in mind, we can turn to the numerous challenges which the Sierra Club and the City of Angoon have raised to Shee Atika's various permit applications.

A. Corps of Engineers Permit for a Log Transfer Facility at Cube Cove.

Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, Shee Atika is required to obtain a permit from the U. S. Army Corps of Engineers to construct and operate its proposed log transfer facility at Cube Cove. Components of the facility include a breakwater, continuous chain transfer system, A-frame transfer system, barge loading ramp, small boat dock and ramp, raft construction area, and mooring buoys. Typically, the harvested timber will be transported by truck on logging roads located exclusively on Shee Atika's lands to the log transfer facility in Cube Cove. Logs will be stored on land until time of shipment, temporarily placed into the water in a non-violent manner, assembled into rafts, and towed from the cove. Routine operations are expected to occur primarily from mid-April to mid-October of each year, although some logs may be transported from early March to mid-April and/or from mid-October to mid-December. No logs will be transported by raft or placed in the water from mid-December to March 1.

Several procedures will be incorporated into the facility operations to minimize potential adverse impacts to the environment. These procedures include storage of lands upland, a non-violent let down system to transfer logs from shore into the cove, and transfer of rafts from the cove as quickly as possible.

Shee Atika applied for a permit for this facility from the U. S. Army Corps of Engineers in the spring of 1981. The public comment began in late spring, and was extended several times as a result of requests from the Sierra Club and Angoon. It was not until December of 1981 that public hearings on the proposed facility were held. At that time, two hearings were held, one in Juneau, and one in Angoon. At the request of Angoon, the public comment period was extended further, until February 1, 1982.

The hearings were held jointly by the Corps of Engineers, the Alaska Department of Environmental

Conservation (DEC), and the Alaska Office of the Governor, Department of Policy Development and Planning (DPDP). DEC is required under the Clean Water Act to certify that the proposed project is consistent with state water quality standards, and it so found. DPDP is required, under the Federal Coastal Zone Management Act, to determine that the project is consistent with the State Coastal Management Program (ACMP), and it determined that it was. As part of the permitting process, numerous state and federal agencies submitted comments on the project to the Corps and to DEC. None of these agencies had any objection to the project. Accordingly, the permit was issued to Shee Atika in April, 1982.

I. Appeal of DEC Decision. As expected, the Sierra Club and the City of Angoon appealed DEC's decision to issue a Certificate of Reasonable Assurance. Pursuant to DEC regulations, the Sierra Club was required to file a Statement of Issues, Witnesses, and Documents within 30 days after the Commissioner determined to grant the request for a hearing. Instead of filing such a statement, however, the Sierra Club filed a motion for an extension of time. In this request, it stated that it was involved in on-site investigations at Cube Cove, that the results of this investigation were not yet available, and that it needed the results of such investigation to determine what witnesses, in addition to Mr. Ellis and Ms. Calvin, would be needed. Thereafter, the Sierra Club claimed, it would locate and retain such experts. The Sierra Club requested an additional 30 days.

In fact, the "investigations" being conducted by the Sierra Club consisted of an overnight visit by Calvin and Ellis to Cube Cove on August 3rd and 4th, 1983, more than two weeks prior to the time the Sierra Club filed its motion. Calvin and Ellis conducted no scientific studies, or other tests or experiments which would require time to analyze. Rather, they simply made some visual observations, both on the surface, and under water by diving. This information was readily communicable to the Sierra Club.

More important, perhaps, is the fact that the decision to issue the Certificate of Reasonable Assurance was made in April of 1982. The appeal was not filed until June, and the "investigations" not commenced until August. There is simply no reason why, in the five month period of time between when the Certificate was granted and discovery was finally due, the Sierra Club could not have conducted a one day investigation at Cube Cove.

Once again the time came for the Sierra Club to file its discovery statement, and once again the Sierra Club filed not a statement of witnesses, documents, and issues, but another request for extension of time. In this request, the Sierra Club asked for an additional three weeks. It stated that "funding uncertainties" had hampered its ability to obtain expert witnesses for the hearing, but that these funding problems were expected to be resolved by October 15, 1982. The Sierra Club also claimed that Mr. Zaelke had been out of town, and that Ms. Malchick, who would handle the case for the Sierra Club, had not yet arrived.

When the Commissioner denied their second request for an extension of time, the Sierra Club submitted a list of 11 expert witnesses which they intended to call, and 26 documents. The list of witnesses stated that it was tentative, and that "any and all changes will be undertaken only with notice and immediate disclosure of new information to all parties."

Throughout November and December, counsel for Shee Atika attempted to reach an agreement with counsel for the Sierra Club over further discovery procedures. Counsel for Shee Atika wished to depose the expert witnesses listed by the Sierra Club. Counsel for the Sierra Club explained that they had no money to take the depositions of Shee Atika's witnesses, and wished to proceed by interrogatories. Although this procedure was acceptable to Shee Atika, the Sierra Club refused to make its witnesses available for deposition. Finally, to resolve the problem, a pre-trial conference was held in January. The meeting was delayed until such time as it was convenient for Mr. Brinklemeyer, then counsel for the City of Angoon, to come to Juneau.

However, shortly after the pre-trial conference, Mr. Brinklemeyer withdrew from the case.

At the pre-trial conference, the Sierra Club demanded that it be allowed to serve interrogatories, request for admissions, and request for production of documents on Shee Atika, and then be allowed to depose all of Shee Atika's witnesses, notwithstanding the fact that DEC's procedures permit none of these actions. Shee Atika indicated that it was ready to go to trial, and that the hearing should be held as soon as possible. The Sierra Club proposed a five month discovery period, which was rejected by the Hearing Officer. The Hearing Officer did grant the Sierra Club's request to engage in discovery, however. Accordingly, the parties exchanged interrogatories, requests for production, and admissions. The Sierra Club's questions, including sub-parts, numbered in excess of 80. Shee Atika's interrogatories to the Sierra Club were similarly lengthy. Shee Atika, in good faith, answered all of the interrogatories propounded by the Sierra Club in detail, and served them upon the Sierra Club within the requisite time period. The Sierra Club, however, declined to answer any other than the first 20 questions of Shee Atika, on the grounds that the Alaska Rules of Civil Procedure prohibited more than 20 interrogatories without leave of court. This was the first time this issue had been raised with the parties. Rather than raising it immediately upon receipt of Shee Atika's interrogatories, so that an equitable solution could be reached, the Sierra Club said nothing, and merely sent back the empty questions to Shee Atika with its objection noted. The Hearing Officer then ordered the Sierra Club, over its strenuous objections, to answer the interrogatories.

When the time came for depositions, Shee Atika identified a number of the witnesses listed on the Sierra Club's list of witnesses and documents and who it wanted to depose. Notwithstanding the Sierra Club's earlier statement that it would keep all parties apprised of the status of its witness list, Shee Atika found out for the first time that most of the witnesses on the Sierra Club's list were no longer in fact potential witnesses. Indeed, out of the 19 witnesses on the original list, Shee Atika was informed that the Sierra Club only intended to call two, Mr. Ellis and Mr. Leon. Shee Atika indicated that it wished to depose these two witnesses, and the Sierra Club responded that it wished to depose several of Shee Atika's witnesses. Depositions were therefore set in Seattle and Sitka, the location of the witnesses.

Accordingly, Shee Atika attorneys flew to Seattle, and began preparing for the depositions. One of Shee Atika's witnesses whom the Sierra Club indicated it wished to depose left a previous commitment and took a late flight to arrive in time for the deposition. When counsel for the

Sierra Club arrived at the deposition, however, they informed Shee Atika that they no longer wished to depose any of Shee Atika's witnesses. This was a rapid departure from the Sierra Club's position less than one month earlier that it could not present its case until it had deposed all of Shee Atika's witnesses. The Sierra Club's rapid reversal of position makes it clear that its goal in scheduling depositions was not in fact to have depositions, but rather to delay the time for the hearing as much as possible.

Shee Atika proceeded to depose the one witness which the Sierra Club had produced, Mr. Leon. At the close of the deposition, the question of payment for witness fees arose. Because the matter had not been raised at any prior time, and in particular not at the pre-trial conference when depositions were discussed, Shee Atika understood that each party would pay the witness fees of its own witness while that witness was being deposed by the other party. The Sierra Club indicated that they wished to have the deposing party pay witness fees. Shee Atika indicated that it would not voluntarily agree to this procedure, and suggested that the matter be submitted to the Hearing Officer. Shee Atika agreed to pay any and all witness fees which the Hearing Officer might decide it was required to pay.

When the Sierra Club attorney, Mr. Zaelke, who was not present at the deposition, was informed of this dispute, he telephoned Shee Atika's counsel, and informed them that he refused to make his other witness available until we agreed to pay his witness fees. Shee Atika indicated that if Mr. Zaelke were going to call Mr. Ellis as a witness, that Shee Atika had a right to depose him, and that we would pay his witness fees if ordered to by the Hearing Officer. At that point, Mr. Zaelke indicated that he would not let us depose Mr. Ellis under any circumstances, and that he would not call him as a witness at the hearing.

The weekend before the hearing the parties exchanged final lists of witnesses and documents. After close to nine months of delay for the alleged purpose of having adequate time to prepare its case, the Sierra Club announced that it would call no live witnesses to testify, and submitted a list of documents not previously identified in any prior list of documents by the Sierra Club.

At a pre-hearing conference held the day before the hearing, the Hearing Officer expressed concern that the Sierra Club did not propose to call any live witnesses. At the insistence of the Hearing Officer, and over the vigorous objection of Shee Atika, the Hearing Officer determined to allow the Sierra Club to call Mr. Ellis.

In its Statement of Issues to be decided at the hearing, the Sierra Club cited numerous "failings" of DEC. They alleged that DEC failed to carry out the necessary field investigations, failed to make adequate fish and wildlife surveys, relied too much upon Shee Atika and its consultants, failed to provide an adequate administrative record, failed to evaluate the need for the facility, and failed to investigate, review, and consult with local, state, and federal agencies, and the public. The Sierra Club also alleged that Cube Cove has pristine water which deserves stringent protection, that deposits of bark and the grounding of logs will occur despite the permit conditions, that water quality violations will result, that DEC did not consider adequate mitigation measures to protect water quality, that DEC failed to consider the alternatives of barges, helicopters and balloons, that DEC failed to consider run off control from the storage area, failed to consider alternative transfer sites and that it failed to make the proper ACMP consistency determination.

The Sierra Club also alleged that the location, layout, and design of the facility did not minimize impacts, that bark deposition was likely, and that the cove was too small and too shallow and had a sill which would inhibit flushing. It claimed that the site plan did not adequately minimize environmental effects or conflicts with recreational use, provide safety, or prevent navigational hazards, and that it failed to insure free passage of fish.

With respect to subsistence, the Sierra Club alleged that Cube Cove was used extensively for subsistence hunting and fishing, that DEC failed to accord subsistence use a priority, that the log transfer facility would interfere with subsistence use, that DEC erred in committing an area known to have heavy subsistence use to a log transfer facility, and that it failed to require adequate mitigation to protect subsistence. With respect to recreation, the Sierra Club alleged that Cube Cove was an important public and recreational moorage, that DEC failed to give high priority to recreational use, that the log transfer facility would interfere with public and recreational use, and that DEC failed to impose adequate mitigation measures.

Finally, with respect to fish and wildlife habitat, the Sierra Club alleged that Cube Cove was a critical and unique fish and wildlife habitat, that DEC failed to adequately assess the fish and wildlife habitat characteristics of the area, that DEC failed to maintain and enhance fish and wildlife habitat and that the log transfer facility would adversely affect habitat by pollution, disruption of current flow, bark deposition, boat traffic, anchor chains, rock fill, noise, light, human habitation, timber storage and harvest, and other impacts, that DEC failed to determine whether the balance of needs was proper, and that it failed to require adequate mitigation measures to protect fish and wildlife habitat.

When the time came for the Sierra Club to prove these allegations, however, the evidence was nowhere to be found. The Sierra Club introduced no evidence to show that

DEC was required to carry out field investigations, that it relied too much on Shee Atika, that it failed to provide an adequate administrative record, that it failed to evaluate water quality and ACMP consistency, that it failed to evaluate the need for the facility or that it failed to consult with state, federal, local agencies and the public. With respect to water quality, the Sierra Club introduced no evidence to show that the water quality in Cube Cove was pristine. While the Sierra Club did introduce evidence that the continuous chain transfer system resulted in the deposition of some bark on the uplands where the logs were placed on the log transfer facility, it introduced no evidence that bark would come off of the logs once they reached the water. The Sierra Club introduced no evidence concerning specific parameters of water quality in Cube Cove, and consequently made no specific scientific analysis of the impact of the log transfer facility on water quality. It introduced no evidence to show that the mitigation measures imposed by DEC were inadequate. It introduced no evidence to show that DEC failed to consider barging, helicopters and balloons, no evidence to show that DEC failed to consider run-off control, no evidence it failed to study alternative sites, and no evidence admitted that it failed to make a proper consistency determination.

Contrary to the Sierra Club's allegations, Mr. Ellis, the Sierra Club's one scientific witness, admitted that the breakwater would be located in an area which had a very hard, biologically unproductive sand bottom. He testified that Cube Cove had very good water circulation, and that based on what he heard at the hearing, the impacts of the facility would be less than he originally anticipated. Although Mr. Ellis testified that in his view an A-frame log transfer facility was superior to a continuous chain transfer facility, he admitted that he had only once seen an A-frame in operation, and that was ten years ago. Mr. Ellis indicated that he did not see any salmon in Cube Cove that he saw only one crab, and that he had no evidence that bark in the natural environment was toxic to fish. Mr. Ellis also testified that he had only been to Cube Cove once, and that although he believed that Cube Cove was the only place to anchor on the western shore of Admiralty Island between Hawk Inlet and Angoon, he had never heard of, or been to, any of the other five coves in which CH_2M Hill anchored and performed water quality studies. Mr. Ellis indicated that he had observed seine boats present along shoreline of Chatham Strait, but that none were present in Cube Cove. Finally, Mr. Ellis indicated that he was performing indepth scientific studies for Kootznoowoo, Inc., for their log transfer facility at Dolimi Bay, and that he considered such studies necessary in order to render an expert opinion.

The hearing officer, Ray Pastorino, Esq., reviewed all of the evidence carefully, and rendered a detailed and comprehensive decision. A number of the findings made by the hearing officer are important for the Committee's consideration, and are quoted below.

The hearing officer found that under DEC regulations, the Sierra Club had the burden of proof by a preponderance of the evidence, the lowest standard of proof. He then went on to hold that they had not fulfilled this burden with respect to any of their allegations. Mr. Pastorino stated:

> Requestors [Sierra Club/Angoon] substantially rely on general comments regarding what DEC has not done, what DEC should do to develop more evidence, or what the evidence at the hearing failed to reveal, rather than addressing or acknowledging the substantial data already accumulated. (Decision at 5)

The specific findings of the hearing officer are as follows:

* * *

> [Dr. Palmisano's] study on the baseline ecological conditions at Cube Cove and nearby embayments, plus the testimony of Messrs. Ellis and Scott and Drs. Kaczynski and Schaumberg, refuted the position that Cube Cove is biologically or environmentally unique, or that Cube Cove is an estuary or critical habitat for marine or terrestrial species. (Decision at 5)

* * *

> While Mr. Ellis' testimony was of some value and well intended, it was lacking in depth and scientific technique. His most reliable testimony tended to corroborate Dr. Palmisano's findings. Where disagreement arose, Mr. Ellis either did not have the data

or was outside his own area of expertise. (Decision at 6)

* * *

The evidence of record persuasively demonstrates that the water quality perimeters outlined in 18 AAC 70.020(b) II. 1-6 and 8-12 will not be violated by respondent's proposed facility at Cube Cove. (Decision at 6)

* * *

The marine water quality sediment standard for secondary contact recreation as defined by 18 AAC 70.020 (b)(II)(7)(B)(ii) is one which "shall not pose hazards to incidental human contact or cause interference with the use." The weight of the evidence did not indicate that this standard would be violated. (Decision at 8)

* * *

Requestors allege the waters of Cube Cove are "pristine" and therefore of higher quality than the marine water criteria found on 18 AAC 70.020. Requestors have frequently made this claim but have provided absolutely no evidence to demonstrate such unique qualities. The totality of evidence before us indicated that the marine waters at Cube Cove are no different from the waters found in any of the other embayments studied along the coast of Admiralty Island. (Decision at 11)

* * *

While Requestors' witness Mr. Ellis did made some surface and below-surface observations of currents during his 24-hour stay in Cube Cove, his techniques lacked scientific sophistication and reliability, his opinions were limited by exposure and experience, and ultimately he deferred to the judgment of an oceanographer. (Decision at 15)

* * *

Field studies conducted by Dr. Kaczynski confirmed the results of the various bioassays that wood and bark leachates are not acutely toxic to marine organisms. (Decision at 15)

* * *

Dr. Kaczynski's findings indicated that the runoff from the sort yard at Cube Cove will not adversely affect either the water quality or the marine biota of either Cube Cove or

Chatham Strait... These findings indicated six orders of magnitude level of safety relative to the amount of toxicity that is expected to be introduced into Cube Cove from the sort yard effluent, and illustrated that absolutely no toxicity would be observed. (Decision at 16)

* * *

[Dr. Schaumburg's] analysis of bark sinkage rates demonstrated that the majority of bark introduced into Cube Cove will tend to float either on the surface or in the water column. The bark will therefore move with the currents at the approximate speed of the current. Knowledge of the speed and direction of the currents indicates the approximate path the bark will take within Cube Cove, and approximately how fast it will travel. (Decision at 16)

* * *

For each day that the LTF is in operation, approximately one and one-half days will be required to remove all of the bark introduced into the water column. (Decision at 18)

* * *

In the context of all the water quality standards, the clear weight of the testimony and evidence more than substantially supports the factual finding that the proposed facility will likely produce minimal bark deposit and that which may be created will be completely non-toxic. (Decision at 18)

* * *

Requestors have argued that the placement of logs in the water and stray logs will violate these same standards by precluding recreational activities and causing a solid to be deposited on the water's surface and shoreline. The evidence demonstrated that the very limited recreational use at Cube Cove will not be precluded by the facility.

* * *

Indeed, the new small boat dock will enhance access. (Decision at 23)

* * *

Regarding the deposition of logs theory, Requestors play on words and ignore reality. Certainly, "deposition" absent removal would violate the standard. However, it is clear from the evidence and the original stipulations that removal to prevent

> deposition has always been envisioned. Again, as a matter of evidentiary procedure, Requestors fail to meet the burden and standard of proof required. (Decision at 24)

The hearing officer's final conclusions on the project are noteworthy. He stated:

> I would note at this time that we are reviewing in detail a facility which has proven to be very well designed, with attention focused on the creation of an impact-free operation whenever reasonably possible. The evidence demonstrates that this facility may very well be far superior environmentally to any other currently operating in Southeast Alaska....In relative terms the evidence indicates that we are dealing with a superior design which may well serve as a model for other facilities that may be testing the standards in more appreciable ways. (Decision at 24)

The hearing officer also found that DEC had an adequate record when it made its decision to issue the certificate. He noted that a Mr. Stokes of the department testified that DEC had more information about Shee Atika's proposed log transfer facility than it had on any other log transfer facility in Southeast Alaska. He noted that the Sierra Club's exhibits and witnesses added very little, if any information to that existing at the time of certification, and that they provided no evidence which calls into question the information which was before DEC at the time of certification.

The Hearing officer also rejected the subsistence claims made. He stated:

> A great deal of the time was spent at the hearing through testimony and exhibits (and

> at the public hearings) to establish the quantitative utilization of the area for subsistence purposes. The total weight of the evidence tends to demonstrate that Cube Cove is a fairly low use area. (Decision at 31)

After considering in detail all of the arguments on subsistence, the hearing officer came to the following conclusions:

> [T]he evidence clearly shows that (a) Cube Cove is not an important or critical subsistence resource area; (b) Cube Cove is not an important or frequently used subsistence area for Angoon Natives; (c) there is no credible evidence that installation and use of the proposed LTF will adversely impact recognized subsistence rights; and (d) there is no evidence that Respondent [Shee Atika] is unwilling to recognize or cooperate in assuring opportunities for the subsistence use of the Cube Cove area and its residents.

After considering all of the evidence, the hearing officer found that the Sierra Club had not demonstrated that the issuance of a certificate was improper. His comments on the evidence introduced by the Sierra Club in the case are worthy of Committee note:

> Simply put, after a year of procedure and litigation, Requestors have presented little, if any, substantive evidence to support their claims which was not already extant at the time of certification. They have not carried either the burden or the standard of proof in these proceedings (Decision at 40)
>
> It is noteworthy that, after a year of preparation, Requestors produced one witness with any scientific expertise who had visited Cube Cove for study, and that one only at the urging of the hearing officer. (Decision at 41)

In short, the entire appeal procedure accomplished nothing of substance, and served only to force Shee Atika to incur tremendous expense to defeat grandiose allegations which suddenly disappeared when the time came for their proof by the Sierra Club. Delay and cost to Shee Atika, however, the Sierra Club's two goals, were accomplished.

Another issue at the hearing was whether the Commissioner should enjoin a 25-acre clearcut for a sort yard which Shee Atika proposed to develop adjacent to Cube Cove. Shee Atika filed its notice of intent to cut with the Alaska Department of Natural Resources in October 1982. The Sierra Club sought to have the commissioner enjoin the clearcutting on the grounds that it was part of the log transfer facility, and that the commissioner therefore had the jurisdiction to halt the operation pursuant to the Alaska Coastal Management Plan, notwithstanding the fact that the activity did not in any way involve the navigable waters or other resources under the commissioner's jurisdiction. The commissioner held that he had no jurisdiction to halt the activities because it did not involve navigable waters, and that the matter was properly within the jurisdiction of the Department of Natural Resources. The Sierra Club brought an interlocutory appeal of this decision to the Alaska Superior Court, and, without adequate notice to Shee Atika, obtained a temporary restraining order halting the clearcutting. The Superior

Court ultimately held that the commissioner had the jurisdiction to enjoin the clearcut, and remanded the matter to the commissioner to determine whether or not the facts of the case justified issuing such an injunction.

Pursuant to a stipulation between the parties, it was agreed that this issue would be considered along with the merits of the Sierra Club's appeal at the adjudicatory hearing. After presentation of all the evidence, the hearing officer held as follows:

> Requestors produced no expert testimony or other evidence on how the clearcut operation would violate the statutory and regulatory factors to be considered by the Commissioner. Indeed, Requestors produced no testimony whatsoever concerning adverse impacts of the 25-acre clearcut....
>
> * * *
>
> Requestors have not borne their burden of proof on this issue as set out in 18 AAC 15.210(a)(1-3). They have not demonstrated with any specific evidence that the timber harvesting and other activities on the 25-acre tract will be violative of applicable laws, regulations, or create relative harm. They have introduced no testimony on these points, and the publications and reports they have submitted do not alone form an adequate evidentiary basis for a finding that the specific 25-acre clearcut and clearing operation will produce adverse affects. Impacts alleged by Requestors have been almost impeccably based upon generalized and undifferentiated speculation and conjecture, which is not enough. (Decision at 38, emphasis added)

The commissioner of DEC adopted the hearing officer's decision in its entirety. In addition, the commissioner made three additional findings which are of relevance. The commissioner found:

> Contrary to Requestor's position, I do not find any meaningful evidence presented by them which demonstrates the waters of Cube Cove to be of higher quality than the natural conditions existing there or in adjoining areas.
>
> * * *
>
> A sufficient showing of public need was made by the respondents, with no evidence save argument coming from Requestors on the issue. The total record and respondents financial statement demonstrate a real and discernible public need.
>
> * * *
>
> Regarding "feasible or prudent alternative(s)," the record does not disclose any which would satisfy these criteria without enormous costs and extensive disruption of the environment.

That the Sierra Club is interested in harassing Shee Atika, and not in raising good faith legal concerns is amply illustrated by the fact that the Sierra Club has appealed the commissioner's decision.

B. Appeals of the Department of Natural Resources (DNR) rulings.

In its effort to halt the 25-acre clearcut discussed above, the Sierra Club not only filed an appeal with the Alaska Department of Environmental Conservation, but also the Alaska Department of Natural Resources (DNR).

Timber harvesting activities in Alaska are regulated by DNR pursuant to the Alaska Forest Practices Act. (A.S. 41.17.020 et seq.) Section 41.17.090 of that Act establishes the procedure private landowners must follow before engaging in timber operations on their land. The operator is required to give notification to the commissioner at least 30 days in advance of the proposed operation. The notice is to include a brief written description of the operation, a map showing the location of the activities, proposed measures for soil conservation and reforestation, and evidence that the timber owner has approved the operation. Within five days of receipt of the notice, DNR must distribute the materials to affected state agencies. Those agencies must make recommendations to DNR within 20 days after receiving the materials. During the 30 day period, DNR may inspect the proposed operation to ensure that it is in accord with the standards promulgated pursuant to the Act. This section specifically provides that the operator may legally commence operations upon expiration of the 30 day period or upon notice from the commissioner that the inspection has been completed, whichever occurs first.

On October 8, 1982, Shee Atika filed its notice of intent to clearcut 25 acres at Cube Cove. Three days later, DNR, as required, notified DEC and ADF&G of the notification. An inspection of the area to be clearcut was made by DNR and ADF&G on November 8, 1982. Representatives of DEC were invited to attend the inspection, but declined. No potential violations of the Forest Practices Act were discovered during this inspection. On or about November 18, 1982, Shee Atika commenced timber harvesting operations.

On November 8, 1982, the Sierra Club wrote a letter to DNR requesting that it enjoin the clearcutting until after DEC had completed its adjudicatory hearing on the log transfer facility. The Sierra Club argued that because DEC might revoke the certificate, thereby preventing Shee Atika from constructing the log transfer facility, DNR should prevent Shee Atika from engaging in any timber harvesting until that time. The Sierra Club also alleged that DNR had not notified DEC and ADF&G as required, and that Shee Atika might need other permits in order to perform activities ancillary to the clearcutting.

DNR responded, stating that under the Forest Practices Act, it had no authority to enjoin the clearcutting after the 30 day notice period had expired. It also stated that Shee Atika was not engaged in any activity which would justify the initiation of enforcement action by DNR for a violation of the Forest Practices Act. DNR felt that Shee Atika was in full compliance with the Forest Practices Act regulations. It noted that contrary to the Sierra Club's allegation, both DEC and ADF&G had been notified on October 11, more than one more before operations commenced. It pointed out that there were no provisions in the Forest Practices Act which prohibited an operator's timely commencement of activities due to an action on the part of the state agency. Finally, DNR explained that no heavy equipment would in fact be used in the operation, and that no additional permits were necessary.

Notwithstanding the fact that DNR had responded to all of the Sierra Club's allegations, it filed an appeal to the Commissioner of DNR. The Sierra Club argued that Cube Cove was one of the most, if not the most, important subsistence hunting and fishing area for Angoon. It argued that this area was old growth forest, and therefore prime habitat for Sitka blacktail deer. It also argued that the proposed clearcutting violated Section 22(k) of the Settlement Act.

As usual, however, the Sierra Club provided no factual backup for its allegations. Contrary to the Sierra Club's allegation, the area to be clearcut was not old growth, but rather second growth forest approximately 60 years old, the kind of habitat which the Sierra Club continually alleges is incapable of supporting any deer. The fact that this area is second growth is obvious to anyone who has ever been on the site, as there are numerous stumps in the area. In addition, the amount of acreage involved was too small to even support one deer, much less sustain a population of deer sufficient for the entire village of Angoon.

The Sierra Club's 22(k) allegations were also without factual backup. For example, the Sierra Club alleged that the operation violated Section 22(k) because

DNR did not specifically require that a buffer strip be left around eagle nest trees. There were, however, no eagle nest-trees on the entire area to be clearcut.

The commissioner of DNR rejected the Sierra Club's appeal. The commissioner reiterated that the Forest Practices Act did not require approval from DNR before the commencement of operations, and therefore there was no appealable action. In addition, because no permit was required, under the terms of the Alaska Coastal Management Program, no consistency determination was required. Finally, with respect to the 22(k) allegations, the commissioner found that pursuant to the Memorandum of Understanding and Plan of Action, the Bureau of Land Management (BLM) is responsible for the enforcement of Section 22(k), not DNR.

With respect to the merits of the Sierra Club's appeal, the commissioner found that the notification and inspection did not in fact reveal any violations of the Forest Practices Act, and that the management practices of the Forest Service alleged to have been violated by Shee Atika were not in fact applicable to the corporation under Section 22(k).

On February 9, 1983, the Sierra Club appealed DNR's decision. The Sierra Club alleged that the commissioner incorrectly ruled that DNR had no approval nor denial authority over Forest Practices Act notifications, that DNR had taken no administrative action which was appealable, that there was no permitting actions such as would necessitate a consistency determination under the Alaska Coastal Management Program, that DNR was not responsible for ensuring compliance with Section 22(k), and that DNR had no authority to enforce stipulations or requirements pertaining to Section 22(k). This notice of appeal was never served upon Shee Atika.

Due to some confusion on the part of the Clerk's Office of the Superior Court in Juneau, the Sierra Club's brief in support of its appeal was not due until June 20, 1983. On that date, as is typical, the Sierra Club filed a request for a 30 day extension of time. Absolutely no explanation was given for why the Sierra Club needed five months to file a brief in support of its appeal. At this time, the Sierra Club also moved to supplement its notice of appeal to include an allegation that the notice of operations which Shee Atika filed on a completely separate logging operation near Peanut Lake was legally deficient. That question was currently pending before DNR, the issue having been raised by the Sierra Club in an appeal to the Department.

July 20, 1983, the Sierra Club's self-imposed deadline for the filing of its brief, came and went without the filing of any brief. On August 1, 1983, the Sierra Club moved to dismiss the appeal.

D. Litigation Involving the Corps of Engineer's Decision to Issue a Permit for the Log Transfer Facility.

On June 28, 1982, the Sierra Club filed with the Corps of Engineers a Notice of Intention to Sue over its issuance of the permit to allow Shee Atika to construct and operate the log transfer facility at Cube Cove. A letter was also sent to the Department of Commerce in August of 1982, alleging that the construction and operation of the log transfer facility would constitute a taking of marine mammals in violation of the Marine Mammal Protection Act. On January 15, 1983, the City of Angoon filed suit against the Secretary of the Army, the Chief of the Corps of Engineers, the District Engineer for Alaska, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, alleging that the construction and operation of the log transfer facility would violate various federal laws and regulations which those individuals were entrusted to enforce. The Sierra Club intervened in the lawsuit shortly thereafter as a party plaintiff, and adopted in toto the allegations of Angoon.

The Sierra Club and Angoon raised ten basic claims against the federal defendants. In their first claim, they alleged that the court failed to prepare a proper environmental assessment for the facility. The second claim alleged that the approval of the facility by the Corp was a major federal action significantly affecting the environment, and that the Corps must therefore prepare an Environmental Impact Statement (EIS) on the proposed facility. The third claim states that the construction and operation of the log transfer facility would adversely affect the residents of Angoon's opportunity for subsistence, in violation of Section 506(a)(2) of ANILCA. The fourth claim alleged that pursuant to Section 810 of ANILCA, the Secretary of Agriculture had a non-discretionary duty to prepare a report on the impact of the proposed facility on the subsistence uses of Cube Cove and the surrounding area. This claim also alleged that the Corps failed to insure reasonable access to subsistence resources by permitting the proposed facility. The fifth claim argued that Section 22(k) applied twelve (12) years from the date of conveyance, rather than the date of the Act, that the Secretary of Agriculture violated his duty to prohibit timber harvesting because the Corps' permit will facilitate illegal timber harvesting activities in the National Monument, that the management practices applicable to Shee Atika's lands were those which apply to monument and wilderness, and that the construction and operation of the proposed facility would directly violate Section 22(k). The sixth claim for relief suggested that the granting of the permit violated EPA guidelines and Corps regulations in that it would result in the significant degradation of a pristine ecosystem. It further alleged that the administrator of EPA had a non-discretionary duty to prohibit Cube Cove as a disposal site and to order the applicant not to construct the log transfer facility. The seventh claim argued that EPA must order Shee Atika not to construct or operate the proposed facility until a National Pollution Discharge Elimination System (NPDES) permit is obtained. The eighth claim argued that the facility would violate proposed new source standards for timber processing plants. The ninth claim alleged that notwithstanding the fact that DEC has certified that the project was consistent with the Alaska water quality standards, EPA must prohibit Cube Cove as a disposal site and enjoin the project. The tenth claim alleged that notwithstanding the fact that the State of Alaska has certified that the project is consistent with the Alaska Coastal Management Program the federal defendants must enjoin the facility because it would violate the Alaska Coastal Management Program.

In their prayer for relief, the plaintiffs requested the Court to enter a declaratory judgment declaring the permitting of the facility unlawful. The plaintiffs also requested the Court to preliminarily and permanently enjoin the federal defendants from allowing construction of the proposed facility, to enter an order in the nature of a mandamus directing the defendants to prepare an environmental assessment and an environmental impact statement, to evaluate Cube Cove as a proposed disposal site, and to specifically order the Department of Agriculture to prepare a subsistence evaluation and to order the administrator of the Environmental Protection Agency to order Shee Atika not to construct or operate the log transfer facility.

Upon receipt of the complaint and the Sierra Club's motion for intervention, counsel for Shee Atika contacted counsel for Angoon and Sierra Club and suggested that they enter into a stipulation allowing both the Sierra Club and Shee Atika to intervene in the action. Shee Atika was informed that this would be acceptable to Angoon and the Sierra Club, and was requested to draft a stipulation. Counsel accordingly did so, and sent the stipulation over to the Sierra Club and the City of Angoon's local counsel. After a period of time, when the signed stipulation was not returned, counsel again contacted Angoon's local counsel, and inquired as to its fate. Counsel for the Sierra Club and Angoon informed Shee Atika that they were still agreeable to the stipulation, but they had "lost" it, and requested another copy. Counsel immediately sent over another copy. When counsel's secretary delivered the copy, however, she was informed that the Sierra Club and the City of Angoon would no longer agree to the stipulation.

Shee Atika therefore moved to intervene in the action as the real party in interest. The Sierra Club opposed this request on the grounds that no interests of

Shee Atika would be affected by the litigation. The Sierra Club argued that Shee Atika, as the permit applicant, should be limited in this action "in the same way that they are limited in the permit process--to being merely the supplier of the underlying data (that must still be evaluated independently by the federal defendants). This limited role does not justify intervention." In the event intervention were allowed, the Sierra Club requested that it be conditioned to prevent Shee Atika from seeking the posting of any bond, and to prevent it from raising "any frivolous procedural challenges, including standing." The City of Angoon did not oppose intervention by Shee Atika if the same conditions requested by the Sierra Club were imposed.

Shee Atika's motion to intervene was granted by the Court. The Court refused to imposed any of the conditions proposed by the plaintiffs.

Prior to intervention, however, and indeed, at the very time that Shee Atika was present in Juneau participating in the adjudicatory hearing before the Department of Environmental Conservation, the Sierra Club's attorney traveled to Washington, D.C. to lobby the Justice Department into signing a stipulation. On April 4, 1983, over the strenuous objection of Shee Atika, who was not yet a party to the action, the federal government, the Sierra Club, and Angoon stipulated that the Corps of Engineers would suspend the permit previously issued to Shee Atika, and prepare an environmental impact statement on the proposed log transfer facility. The plaintiffs agreed to dismiss as moot those portions of their complaint which alleged that the Corps was required to perform these activities.

In this lawsuit, the Sierra Club asks the various federal agencies to perform a number of acts which have never been performed with respect to any other log transfer facility in the United States, either inside or outside Alaska. In Alaska alone, the Corps of Engineers has permitted ninety nine (99) log transfer facilities since the passage of the National Environmental Policy Act, and not one EIS was written. Most of those log transfer facilities were located in Southeast Alaska. A copy of the list of all log transfer facilities permitted by the Alaska Division of the Corps of Engineers is attached.

A similar situation exists with respect to NPDES permits. Shee Atika has been informed by the Environmental Protection Agency that it has _never_ issued or required an NPDES permit for any log transfer facility in the United States. Indeed, EPA regulations exclude log transfer facilities from the requirement for an NPDES permit. EPA's regulations define silvicultural point sources as

> "any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants

> are discharged into the waters of the United States." (40 CFR § 122.58(b)(1).

Log sorting and log storage facilities are defined as

> "facilities whose discharge is a result from the holding of unprocessed wood, for example logs or roundwood with bark, or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs." (40 CFR § 122.58(b)(3).

Under 40 CFR § 122.51(c)(1)(v) only those silvicultural point sources defined in Section 122.58 require NPDES permits. Log transfer facilities are not included in that definition, and consequently do not require NPDES permits. Consistent with this interpretation, EPA has not developed effluent guidelines for log transfer facilities, and has not issued NPDES permits for them.

The Sierra Club and Angoon's claim that the Secretary of Agriculture must prepare a subsistence study on the proposed log transfer facility pursuant to Section 810 of ANILCA is equally without merit. As discussed above, Shee Atika's lands are private lands, not public lands. Shee Atika owns all the lands surrounding Cube Cove down to the mean high water mark. Lands below the mean high water mark are owned by the State of Alaska pursuant to the Statehood and Submerged Lands Acts. Shee Atika is in the process of obtaining a tidelands lease from the State of Alaska for use of those lands below the mean high water mark. A preliminary decision to issue the lease has been made by the Alaska Department of Natural Resources, the agency in charge of leasing the tidelands. Final decision is pending the completion of the survey plat.

The Sierra Club's claim that Cube Cove is an inappropriate disposal site, and therefore construction and operation of the log transfer facility is improper, is based on their allegations that Cube Cove is a unique biological area, and that the construction and operation of the log transfer facility will degrade water quality and adversely affect the marine resources in the area. As the commissioner's decision in the DEC adjudicatory hearing makes abundantly clear, Cube Cove is not a unique environment, and the log transfer facility will not have adverse environmental impacts. This claim of the Sierra Club is therefore also without merit.

The Sierra Club also alleges that Shee Atika's log transfer facility must meet the new source standards for the wet storage subcategory of the timber products processing standards. Even a cursory reading of the application criteria for that section, however, demonstrates that the Sierra Club's claim is totally without merit. Section 429.100 (40 CFR § 429.100) states:

> This subpart applies to discharges to the waters of the United States and to the introduction of process wastewater pollutants into publicly owned treatment works from the storage of unprocessed wood, i.e, the storage of logs or roundwood before or after removal of bark in self-contained bodies of water

> (mill ponds or log ponds) or the storage of logs or roundwood on land during which water is sprayed or deposited intentionally on the logs. (emphasis added.)

In certain relatively dry climates, logs are periodically sprinkled to prevent them from drying out and cracking. This is known as "wet deck" storage. In these circumstances, the water sprayed on the logs is recollected and used over and over, sometimes for many years. When this water is finally discharged, it is highly concentrated and has been known to cause environmental problems in certain circumstances.

Shee Atika, however, does not propose to sprinkle its decks. With rainfall in Southeast Alaska in excess of 200 inches a year, there is absolutely no need to sprinkle the decks. Normal rain runoff from log sort yards, does not result in water quality problems. (See testimony of Dr. Vic Kaczynski before the Alaska Department of Environmental Conservation.) Shee Atika does not propose the storage of any logs in self-contained bodies of water. Nowhere in this standard does it set effluent limitations for log transfer facilities. This section is thus totally inapplicable to Shee Atika's operation.

Finally, the Sierra Club's last claims allege that notwithstanding the fact that the State of Alaska has expressly certified that the proposed project would not violate state water quality standards, and is consistent with the Alaska Coastal Management Program, EPA and the Corps of Engineers must override the certifications and specifically find that the facility does not meet state water quality standards, and is not consistent with the Alaska Coastal Management Program. These claims totally lack merit. There is nothing in either the Clean Water Act or the Coastal Zone Management Act which authorizes the Corps and EPA to take these steps; indeed, those Acts provide precisely the opposite, that the decisions by the state is final and conclusive, and may not be overruled by the federal agencies.

In sum, none of the claims raised by the Sierra Club and City of Angoon in Angoon v. Marsh are meritorious, or are grounds for denying the permitting by the federal government of the construction and operation of the log transfer facility.

IV. Litigation Related to Shee Atika's Timber Harvesting and Transferring Operations in the Vicinity of Peanut Lake.

Shee Atika received no funds under the Settlement Act and has been living on borrowed funds since its inception. As this report makes clear, Shee Atika has had to expend considerable sums of money for legal assistance and consulting services in order to obtain and defend permits which are routinely granted to other operations in Southeast Alaska without any supporting documentation being provided by the applicant. To pay off the substantial debts which it had incurred, and to begin to generate income to the end that its shareholders might receive the benefits they are entitled to under the Settlement Act, Shee Atika made plans to construct the log transfer facility in the spring of 1983, and to commence logging operations at the same time. The signing of the stipulation between the federal government and the Sierra Club revoking Shee Atika's Corps of Engineers permit brought an abrupt halt to these plans.

In an effort to generate some income for the corporation, Shee Atika reviewed closely its land holdings, and determined that there were some lands in the vicinity of Peanut Lake which were close enough to the shoreline to allow the timber to be removed by helicopter. While helicopter transfer is exceedingly expensive compared to conventional methods of transfer, Shee Atika hoped to generate some income from the operation. Shee Atika ultimately designated approximately 244 acres, in three separate cutting units, for harvesting during the 1983 season.

The three units were located on relatively gentle slopes, and were set back from lakes, streams, and the shoreline of Chatham Strait. The logs would be felled, and then yarded and removed by helicopter. The helicopter would place the logs in a log boom attached to a tug boat temporarily moored in Chatham Strait. The logs would be towed to a validly permitted log storage area, where they would be processed and either stored on land, or transferred directly to a ship for export.

Shee Atika checked with various federal and state agencies, including the Coast Guard and the Corps of Engineers to determine what permits and authorizations, if any, were needed. The Corps of Engineers indicated that Shee Atika would not need a permit from them to perform these operations. The Coast Guard requested that they be notified shortly before the commencement of the helicopter transfer operations, so that they could determine whether a notice to mariners would be appropriate. Shee Atika filed its notice of intent to operate with the Department of Natural Resources on or about May 8, 1983.

The Sierra Club received a copy of Shee Atika's notice of intent on or before May 18, 1983. It did nothing, however, until June 1, when it filed an emergency motion with the Department of Environmental Conservation seeking to extend the stipulation entered into between the parties which temporarily prohibited the construction of the log transfer facility at Cube Cove to include the harvesting and transferring operation at Peanut Lake. The Sierra Club argued that the proposed helicopter logging operation was part of the Cube Cove log transfer facility, that DEC must therefore enjoin it until it determines that the helicopter logging is consistent with the Alaska Coastal Management Program and until the commissioner issued his final decision on the Cube Cove log transfer facility, and that even if the activity were not part of the Cube Cove log transfer facility, DEC must evaluate it to insure that it is consistent with state water quality standards and the Alaska Coastal Management Program. Shee Atika opposed the Sierra Club's request. In that opposition, it noted that the timber harvesting operation would commence on June 17, 1983.

On Friday, June 24, 1983, after the clearcutting had been going on for one week, at 7:30 p.m., counsel for the Sierra Club contacted Shee Atika and indicated that they were considering requesting Alaska Superior Circuit Judge Pegues to hold a hearing the following Saturday morning on a request for a temporary restraining order. A final decision to seek a temporary restraining order was communicated to Shee Atika's counsel at approximately 10:30 p.m. that evening. In support of their motion for a temporary restraining order, the Sierra Club alleged that the proposed helicopter logging was part of the Cube Cove log transfer facility that the operation required a determination that it was consistent with the Alaska Coastal Management Program, that Shee Atika had failed to comply with Section 22(k) of the Settlement Act, and that the operation violated the stipulation entered into by the parties respecting the Cube Cove log transfer facility. The Sierra Club submitted several affidavits from residents of Angoon in support of its motion, and claimed that if the Cube Cove area were logged, Angoon might not have any food. This claim was somewhat interesting, in that up until this time, the Sierra Club and Angoon had always alleged that Cube Cove was "the most important" subsistence area.

At the time the Sierra Club made the decision to seek a temporary restraining order, the Commissioner of DEC had not yet rendered a decision on their request for an injunction. That decision was rendered orally at the hearing on the T.R.O. by counsel for the State. The Commissioner ruled that the Sierra Club had not provided any evidence of substantive harm sufficient to sustain their request for injunctive relief, and that their suggestion that the proposed activity required joinder with the hearing on the log transfer facility was unpersuasive. He also found that the Sierra Club was not prompt in seeking relief, since they had known about the proposed operation for a considerable period of time before they filed their motion. Finally, the commissioner held that DEC only requires waste disposal permits on a discretionary basis, and this was not the type of activity for which DEC typically required a permit.

Judge Pegues denied the Sierra Club's request for a temporary restraining order. He found that no state authorization for the proposed project was required. He found that the project was physically distinct and completely independent from the Cube Cove log transfer facility, and that the activity could and would occur irrespective of whether the permits for the log transfer facility were issued. He found that the activity did not require authorization by DNR under the Forest Practices Act, nor authorization by DEC under the Pollution Control Act. He therefore ruled that the Alaska Coastal Management Program, which applies only when a specific state authorization is required, also did not apply. Judge Pegues further found the DEC was not derelict in its decision not to require a waste disposal permit, inasmuch as although bark might be dislodged from the operation, it was unlikely to reach levels that would make public lands or waters unfit for public health or aquatic life. He found the Sierra Club's interpretation of the Forest Practices Act notice overly strict and unworkable, and its interpretation of the Act unreasonable. With respect to the Sierra Club's 22(k) claims, he found that because logging would be by helicopter, little soil disturbance was likely, and that petitioners had not demonstrated any harm.

Turning to the subsistence issues, Judge Pegues found that the affidavits not only did not indicate that the cutting areas were in crucial subsistence areas, but in fact they indicated that they were not important subsistence areas, inasmuch as the affidavits averred that the residents from Angoon hunted deer along the shoreline only, and the cutting units were all inland. Finally, Judge Pegues concluded that the Sierra Club had failed to show irreparable harm to them or to the environment.

The Sierra Club filed a motion for reconsideration of Judge Pegues' decision, which was also denied.

The Sierra Club then traveled to federal court, filed an amendment to its claim in Angoon v. Marsh to allege that the helicopter transfer operation was unlawful, and filed a motion for a preliminary injunction on the grounds that the helicopter transferring operation required an NPDES permit. Shee Atika immediately began consultations with EPA as to whether or not in their view the operation required an NPDES permit. Because the expedited briefing schedule required by the Sierra Club did not allow for thorough briefing of this issue, Shee Atika and the federal government signed a stipulation in which Shee Atika agreed that it would obtain an NPDES permit or other necessary authorization from EPA before depositing the logs into the water. The Sierra Club opposed the stipulation on the grounds that this language might result in Shee Atika being able to put the logs into the water without an NPDES permit.

Judge von der Heydt initially issued an order saying that in light of the stipulation entered into between Shee Atika and the federal government, the hearing on the preliminary injunction motion would be cancelled. Leave was given to allow plaintiffs to refile their motion if it became necessary at some future point in time. For reasons unknown to Shee Atika, however, Judge von der Heydt then issued a decision in which he found that the proposed helicopter transfer operation would cause irreparable harm to the Sierra Club and Angoon and enjoined Shee Atika from conducting any log transfer operation upon the waters of Chatham Strait. The Judge's findings were based solely on the information submitted by the Sierra Club, inasmuch as neither Shee Atika nor the federal government filed an opposition brief to the Sierra Club's motion. The information submitted by the Sierra Club and Angoon was basically the same "scientific" information they submitted to, and which was rejected by, the DEC.

Because the Judge's order was overly broad, and because all scientific evidence demonstrated that the proposed operation would have absolutely no environmental impact, Shee Atika filed a motion for reconsideration. Based on the evidence submitted by Shee Atika, Judge von der Heydt vacated his original injunction, and denied the request for a preliminary injunction. However, so much time had elapsed that the weather now precluded Shee Atika from transferring the logs by helicopter and they remain on the ground, deteriorating, because of the actions of the Sierra Club and Angoon.

Meanwhile, on the basis of Judge von der Heydt's order, the Sierra Club filed a new motion with the Department of Environmental Conservation, seeking to have DEC enjoin the clearcutting on the grounds that Shee Atika would be required to obtain an NPDES permit to conduct the helicopter transfer operation, that the clearcutting operation was "part" of the helicopter transfer, that the NPDES permit would require a certification that the project was consistent with state water quality standards as well as a determination that it was consistent with the Alaska Coastal Management Program. The Sierra Club then argued that because the cutting operation was "part" of the transferring operation, it must be enjoined until determined to be consistent with the Alaska Coastal Management Program. The Sierra Club asked for expedited consideration of the motion.

Shee Atika opposed expedited consideration on the grounds that the Sierra Club had known about the activities since May 18th, and that the clearcutting had been occurring for over a month. There certainly was no emergency.

Rather than waiting for DEC to rule, however, the Sierra Club rushed into Superior Court, seeking a preliminary injunction on the same grounds as those raised with DEC. The Sierra Club also sought to have the preliminary injunction motion briefed on an expedited basis.

Shee Atika opposed the request for expedited treatment. Due to a failure in the clerk's office, Shee Atika was not notified that a hearing was going to be held on the motion for expedited treatment until approximately one hour before the hearing. Counsel was therefore forced to participate by telephone. At the hearing, the Sierra Club called two witnesses from the village of Angoon. One witness testified that he occasionally hunted at Cube Cove, as well as up and down the coasts of Admiralty, Baranof, and Chichigof Islands. The other resident testified that he personally did not hunt in the Cube Cove area, but that he thought he knew of several families in the village of Angoon who occasionally hunted in this area.

Shee Atika argued that because the residents of Angoon had no right to engage in subsistence activities on its land, they would not suffer any irreparable harm from the clearcutting, and therefore expedited treatment was not necessary.

At the conclusion of the hearing, Judge Carpeneti indicated that based on all of the material before him, he thought it would be unlikely that he would grant the request for expedited treatment, but took the question under advisement. The next day, the Sierra Club's request was denied.

At this point, the Sierra Club withdrew their request for a preliminary injunction from both the Superior Court and the Department of Environmental Conservation.

V. Other Litigation.

A. Water Appropriations Permit.

The most recent, and perhaps the most absurd Sierra Club challenge to date, is its appeal to the Department of Natural Resources of the department's decision to issue a water appropriations permit to Shee Atika. Shee Atika applied for a permit to divert 13,000 gallons of water per day (withdrawal flow roughly equivalent to the flow required by three to four bathroom showers) from a creek which flows into Peanut Lake. The diversion would be above a barrier falls to Dolly Varden fish using the lakes. The Sierra Club opposed the appropriation on the grounds that it would damage important fish and wildlife habitat, and cause irreparable harm to the subsistence activities of the Natives of Angoon.

Investigations by CH_2M Hill environmental scientists again have demonstrated the baselessness of the Sierra Club's claims. The only fish which live in either the stream or Peanut Lake are a naturally stunted version of Dolly Varden, which reach a maximum size of six inches. In light of the numerous salmon in marine waters and the streams of Admiralty Island, as well as regular size Dolly

Varden (12-24 inches) and other anadromous fish, it is ridiculous to suggest that the people of Angoon will travel 35 miles by boat, hike in three or four miles by foot up a steep cliff, to fish for six inch fish.

The Sierra Club's allegation that the appropriation will destroy important wildlife habitat is equally baseless. CH_2M Hill's wildlife biologist, Dr. Mishaga, noted that the impoundment and dam would be very similar to a small beaver dam and pond, which are common natural features of stream ecosystems throughout Southeast Alaska. Dr. Mishaga suggests that the proposed impoundment may actually improve habitat conditions. Dr. Mishaga also points out that the area in question is not an important habitat for birds or wildlife.

The Department of Natural Resources has already rejected the Sierra Club's challenges to the water appropriations permit. The Sierra Club has appealed this rejection to the Director of the Division of Land and Water Resources. We also anticipate that the Director's decision will be issued shortly, and that it will be favorable to Shee Atika. Thereafter, we anticipate the Sierra Club will seek court review, undoubtedly prepared to take this issue to the Supreme Court of Alaska.

LOG TRANSFER FACILITIES PERMITTED BY ALASKA DISTRICT CORPS OF ENGINEERS

AK Lumber & Pulp-Port Frederick 33, 14 miles S.W. of Hoonah, Sitka, Alaska
21 Aug 80 EA 8 Aug 80

AK Lumber & Pulp-Peril Strait 28-Sec 19-24, T. 51 S. R. 63 E.64 E., C.R.M. Baranof Island,AK
25 Aug 76 EA 10 Aug 76

AK Lumber & Pulp-Peril Strait 29, Sec.7/18 T. 51 S., R. 65 E., Chichagof Island, Alaska
12 July 79

AK Lumber & Pulp-Peril Strait 7, 241/2 nautical miles N. of Sitka, Sitka, Alaska
14 March 58 No EA

AK Lumber & Pulp-Peril Strait 21, 1/4 nautical miles S.E. of Dead Tree Island, Sitka, Alaska
16 Nov 77

AK Lumber & Pulp-Peril Strait 13, 24 nautical miles N. of Sitka, Sitka, Alaska
17 May 63 No EA

Ketchikan Pulp-Clover Psg 16, approximately 14 miles N. of Ketchikan, Ketchikan, Alaska
1 March 78 EA 30 Dec 77

Ketchikan Pulp-Davidson Inlet 9, approximately 53 miles S.W. of Wrangell, Ketchikan,Alaska
7 Aug 79 EA 28 July 75

Ketchikan Pulp-Davidson Inlet 14, approximately 55 miles S.W. of Wrangell, Ketchikan, Alaska
24 April 73 EA 30 July 73

AK Lumber & Pulp-Tenakee Inlet 24, 8 miles N.W. of Tenakee Springs, Chichagof Island, Alaska
11 July 79 EA 26 June 79

AK Lumber & Pulp-Tenakee Inlet 21, T. 47 S., R. 63 E. 2 miles E. of Tenakee, Alaska,
Chichagof, Alaska
11 July 77 EA 5 July 77

AK Lumber & Pulp-Silver Bay 15, 81/2 miles S.E. of Sitka, Sitka, Alaska
31 July 81 EA 22 Aug 79

AK Lumber & Pulp-Silver Bay 14, Sec.13,24,25,30, T. 56 S. R. 64 E. & 65 E., Sitka, Alaska
29 May 79

AK Lumber & Pulp-Silver Bay 13, approximately 7 miles S.E. of Sitka, Alaska
11 May 77 EA 27 April 77

AK Lumber & Pulp-Silver Bay 8, 51/2 miles E. of Sitka, Sitka, Alaska
10 Sept 76 EA 2 Sept 76

AK Lumber & Pulp-Silver Bay 5, Baranof Island 4 nautical miles S.E. of Sitka, Sitka, Alaska
8 June 76 Ea 24 May 76

AK Lumber & Pulp-Silver Bay 6, 7 nautical miles S.E. of Sitka, Sitka, Alaska
14 Feb 58 None

AK Lumber & Pulp-Silver Bay 3, 41/2 miles easterly of Sitka, Sitka, Alaska
11 May 70 EA 10 May 74

Ak Lumber & Pulp-Chatham St65 3/4 mile southeast of Chatham Cannery, Sitka, Alaska
10 Dec 75 EA 26 Nov 75

AK Lumber & Pulp-Chatham St73 21 miles N.E. of Sitka, Alaska, Sitka, Alaska
14 June 76 EA 28 May 76

AK Lumber & Pulp-Fish Bay 5 32 miles N.W. of Sitka, Sitka, Alaska
7 Oct 69 No EIS

AK Lumber & Pulp-Frederick Sound 7 on the S.E. shore of Admiralty Island, Sitka, Alaska
29 July 66 No EIS

AK Lumber & Pulp-Frederick Sound 12 24 miles N.E. of Petersburg, Alaska, Sitka, Alaska
6 Nov 73 EA 25 Jan 74

AK Lumber & Pulp-Frederick Sound 13 10 miles S.W. of Kake, Sitka Alaska
5 Feb 74 No EIS

AK Lumber & Pulp-Katlian Bay 1-10 miles N. of Sitka, Sitka Alaska
7 Feb 58 No EIS

AK Lumber & Pulp-Katlian Bay 4-7 nautical miles N. of Sitka, Sitka Alaska
18 Feb 74 EA 15 Mar 74

AK Lumber & Pulp-Port Frederick 49-54, T. 44 S. R. 62 E., Sitka, Alaska
6 Jan 83 EA 18 Oct 82

Cape Fox Corp-George Inlet 18 on Revillagigedo Island 10 miles N.E. of Ketchikan, Alaska
20 Mar 74 EA: 26 Aug 74

Cape Fox Corp-George Inlet 29, Sec 11, T. 74 S. R. 91 E., Ketchikan, Alaska
15 July 81 EA 1 July 81

Cape Fox Corp-George Inlet 30, Sec 17 & 18 T. 74 S., R. 92 E. Coon Cove, Ketchikan, Alaska
24 Sep 80 EA 19 Aug 80

Cape Fox Corp-George Inlet 31 Sec 7, T 74 S., R. 92 E., Ketchekan, Alaska
8 Oct 80 EA 15 Aug 80

Cape Fox Corp-George Inlet 35, Sec 18 & 17, T. 74 S. R. 92 E., Ketchikan, Alaska
20 Aug 82 EA 27 July 82

Cape Fox Corp-Tongass Narrows 259, Revillagigedo Island, S.E. Alaska(approximately 2-12 miles southerly of City of Ketchikan)
19 April 68 No EIS

AK Lumber & Pulp-Chatham Strait 58, approximately 21-1/2 miles N.E. of Sitka, Alaska
10 June 74 EA 31 May 74

AK Lumber & Pulp-Chatham St. 63, 1/2 miles N.E. of Chatham Cannery, Sitka, Alaska
22 Nov 74 EA 13 Nov 74

Ketchikan Pulp-Clarence Strait 39, approximately 36 miles N.W. of Ketchikan, Alaska
28 March 74 EA 25 April 74 No EIS

Ketchikan Pulp-Clarence Strait-28 on the east shore of Coffman Cove, 65 miles N.W. of Ketchikan, Ketchikan, Alaska
25 June 79 EA 29 May 79

Ketchikan Pulp-Clarence Strait 21, Prince of Wales Island, Alaska
22 Oct 62 No EA

Ketchikan Pulp-Clarence Strait 19, on the east coast of Prince of Wales Island, Alaska
Ketchikan
4 Oct 57 No EIS

Ketchikan Pulp-Clarence Strait 18, on Grindall Peninsula, Prince of Wales Island
Ketchikan, Alaska
9 Aug 57 No EA

Ketchikan Pulp-Clarence Strait 13, on Prince of Wales Island
4 March 55 No EA

Ketchikan Pulp-Clarence Strait 14, Prince of Wales Island, Ketchikan, Alaska
11 March 60 No EA

Ketchikan Pulp-Clarence Strait 15a on the N.E. shore of Prince of Wales Island, Ketchikan
2 July 73 EA 27 Aug 73

Ketchikan Pulp-Behm Canal 49, approximately 35 miles N-N.E. of Ketchikan
16 May 78 EA 4 May 78

Ketchikan Pulp-Carroll Inlet 8, 18 miles N.E. of Ketchikan
31 July 74 EA 18 July 74

Ketchikan Pulp-Behm Canal 16, 23 miles N. of Ketchikan
24 Aug 56 EA None

Ketchikan Pulp-Behm Canal 43, approximately 38 miles N. of Ketchikan
18 Dec 75 EA 20 Nov 75

Ketchikan Pulp-Frederick Sound 1, W. of the mouth of Patterson River, S.E. Alaska
2 Oct 73 EA 24 Sep 73

Ketchikan Pulp-Frederick Sound 2, on the east coast of Mitkof Islands, Ideal Cove
4 Oct 57 EA None

Ketchikan Pulp-Frederick Sound 3, Vixen Inlet on the west side of Cleveland Peninsula, Ernest Sound
6 April 56 EA None

Ketchikan Pulp-El Capitan Psg 6- Kosciusko Island approximately 44 miles S.W. of Wrangell Alaska, Ketchikan
25 July 74 EA 1 July 74

Ketchikan Pulp-El Capitan Psg 10, 54 miles S.W. of Wrangell, Alaska, Ketchikan
21 June 74 EA Not dated , is either May of June 74

Ketchikan Pulp Co. - Kashevarof Psg 1 South of Thorne Island on the NE Shore of Prince of Wales Island 1 Aug 63
No EIS

Ketchikan Pulp Co. - Kasaan Bay 30 - 38 Miles NW of Ketchikan, Alaska 1 Apr 78
EA: 26 Jan 78

Ketchikan Pulp Co. - Kasaan Bay 28 approximately 38 miles NW of Ketchikan, Alaska 18 May 80
EA: 27 Apr 77

Ketchikan Pulp Co. Kasaan Bay 19 approximately 7 miles NW of Kasaan Village Prince of Wales Island 31 Dec 79
EA: 21 Jun 74

Ketchikan Pulp Co. - Kasaan Bay 5 the head of Cool Bay on Prince of Wales Island 31 Dec 58
No EIS

Ketchikan Pulp Co. - Kasaan Bay 2 approximately 9½ miles Southwest of Kasaan, Alaska 31 Dec 57
No EIS

Ketchikan Pulp Co. - Kasaan Bay 7 approximately 9½ miles Southwest of Kasaan, Alaska 31 Dec 58
No EIS

Ketchikan Pulp Co. - Kasaan Bay 8 South side of the entrance to Skowl Arm 31 Dec 59
No EIS

Ketchikan Pulp Co. - Shakan Str 5 about 48 miles westerly of Wrangell, Ketchikan, 6 Nov 73
No EIS

Ketchikan Pulp Co. - Neets Bay 12 Sect 36, T70S, Ketchikan, 30 May 80
EA: 14 May 80

Ketchikan Pulp Co. - Neets Bay 9 approximately 35 miles North of Ketchikan 1 Jul 74
EA: 21 Jun 74

Ketchikan Pulp Co. - Neets Bay 8 on the South side of Neets Bay, Revillagigedo Island, 22 Apr 75
EA: 30 Dec 76

Ketchikan Pulp Co. - Neets Bay 6 - 32 miles North of Ketchikan 18 Jul 74
EA: 8 Jul 74

Ketchikan Pulp Co. - Neets Bay 5 on Revillagigedo Island 21 Jun 73
EA: 27 Aug 73

Ketchikan Pulp Co. - Neets Bay 4 approximately 33 miles North of Ketchikan 6 Feb 73
EA: 6 Dec 73

Ketchikan Pulp Co. - Kashevarof Pass 4 Northeast shore of Prince of Wales Island 3 Jul 63
No EIS

Ketchikan Pulp Co. - Kashevarof Psg 2 Adjacent to Thorne Island, approximately 80 miles Northwest of Ketchikan 26 Nov 73
EA: 5 Mar 74

Ketchikan Pulp Co. - Ward Cove 18 approximately 6 miles Northwest of Ketchikan
May 6 80
EA: May 74 (Not signed) No EIS

Ketchikan Pulp Co. - Ward Cove 23 approximately 6 miles Northwest of Ketchikan
1 Nov 77
EA: 2 May 80 No EIS

Ketchikan Pulp Co. - Tongass Narrows 199, a small cove on Gravina Island Southeast of Rosa Reef Light, 6½ miles Northwest of Ketchikan 30 Oct 72
EA: None No EIS

Ketchikan Pulp Co. - Tuxekan Passage 14 approximately 22 miles North of Klawock
31 Dec 84
EA: 2 Jan 80 No EIS

Ketchikan Pulp Co. - Tuxekan Psg 8 approximately 22 miles North of Klawock
1 Oct 74
EA: 21 Jun 74 No EIS

Ketchikan Pulp Co. - Traitors Cove 8 approximately 25 miles North of Ketchikan
24 Aug 81
EA: 28 Nov 78 NO EIS

Ketchikan Pulp Co. - Traitors Cove 6 approximately 25 miles North of Ketchikan
31 Dec 77
EA: 31 Oct 75 No EIS

Ketchikan Pulp Co. - Tongass Narrows 200 between Lewis Reef and the C-5 Buoy approximately 3 miles Northwest of Ketchikan, Alaska 13 Jan 64
EA: None No EIS

Ketchikan Pulp Co. - Tongass Narrows 206 approximately 2 miles Southwest of the City of Ketchikan, Alaska 5 Feb 76
EA: 27 Jan 76 NO EIS

Ketchikan Pulp Co. - Thorne Bay 14, Sec 28 T71S R84E C.R.M. 12 Sep 80
EA: 27 Aug 80 No EIS

Ketchikan Pulp Co. - Thorne Bay 12 on Prince of Wales Island, Alaska 6 Jun 78
EA: 22 May 78 No EIS

Ketchikan Pulp Co. - Sumner Strait 56 - 29 miles West of Wrangell, Alaska 3 Jun 75
EA: 20 May 75 No EIS

Ketchikan Pulp Co. - Sumner Strait 55 approximately 43 miles Southwest of Petersburg, Alaska 16 Apr 75
EA: 7 Apr 75 No EIS

Ketchikan Pulp Co. - Sukkwan Strait 7 approximately 4 miles North of Hydaburg, laska 22 Aug 74
EA. 13 Aug 74 No EIS

Sealaska Timber Corp. - Port Frederick 37, 6.5 miles Southwest of Hoonah, Alaska
5 Jan 81
EA: 15 Dec 80 No EIS

Goldbelt Incorporated, Hobart Bay 3 Sec 29 T51S R75E 11 Dec 80
EA: 25 Nov 80 No EIS

Goldbelt Incorporated, Hobart Bay 3 Rev Sec 29 T51S, R75E C.R.M. 14 Sep 80
EA: 31 Aug 81 No EIS

Goldbelt Incorporated, Hobart Bay 4 Sec 28, 29, & 32, T51S, R75E 2 Dec 80
EA: 2 Jan 81 No EIS

Sealaska Timber Corp. - Sukkwan Strait 16 Sec 20, T76S, R82E C.R.M. 3 Mar 82
EA: 12 Feb 82 No EIS

Sealaska Timber Corp. - Klawock Inlet 59 Sec 34, T72S, R80E, C.R.M. 14 Apr 82
EA: 5 Apr 82 No EIS

Sealaska Timber Corp. - Frederick Sound 24, Sec 7, T56S, R72E 11 Mar 82
EA: 26 Feb 82 No EIS

Sealaska Timber - Port Frederick 46 Sec. 9 & 10, T44S, R60E, C.R.M. 3 Mar 82
EA: 11 Feb 82 No EIS

U.S. Forest Service Kassan Bay 9, 47 miles West of Ketchikan, Alaska 24 Apr 75
EA: 12 Nov 74 No EIS

U.S. Forest Service Duncan Canal 5 - 2½ miles Southeast of Indian Point, Kupreanof Island 19 Mar 75
EA: 19 Mar 75 No EIS

U.S. Forest Service Duncan Canal 4 on the East side of Kupreanof Island directly across from Woewodski Island 17 Jan 77 EA: 20 Dec 76 No EIS

U.S. Forest Service Clarence Strait 46 off Zarembo Island 16 Jun 78
EA: 30 May 78 No EIS

Sealaska Timber Corp Tlevak Strait 7, Sec 34, T 78S, R81E 19 May 82
EA: 5 Feb 82 No EIS

U.S. Forest Service - Chonlmondeley Sound 16 approximately 20 miles Southwest of Ketchikan 27 Oct 80
EA: 26 Sep 80 No EIS

U.S. Forest Service - Chatham Strait 90 Sec. 60, T45S, R63E, 18 Jan 82
EA: 5 Jan 82 No EIS

U.S.F.S., Tongass National Forest - Chatham Strait 77 Sec , T46S, R63 E, 60 miles Northeast of Sitka 2 Jul 76
EA: 24 Jun 76 No EIS

U.S. Forest Service - Chatham Strait 74, Sitka, Alaska 16 Jul 79
EA: 2 Jul 79 No EIS

U.S. Forest Service - Carroll Inlet 7 Sec. 16, T74S, R93E, C.R.M. 6 May 75
EA: 30 Apr 75 No EIS

U.S. Forest Service - Bradfield Canal 1 approximately 38 miles Southeast of Wrengell, Alaska 4 May 72
EA: None No EIS

U.S. Forest Service - Yakutat Bay 6, Sec 16 & 21, T27S, R34E C.R.M. 18 Feb 82
EA: 28 Jan 82 No EIS

U.S. Forest Service - Ulloa Channel 4 - Sec 7, 12, 13, T76S, R79 & 80E 9Dec 81
EA: 20 Nov 81 No EIS

U.S. Forest Service - Sumner Strait 29 Kupreanof Island, Alaska 3 Apr 74
EA: None No EIS

U.S. Forest Service - Sumner Strait 47 on the South Shore of Kupreanof Island
9 Oct 74 EA: 9 Sep 74 No EIS

U.S. Forest Service - Sumner Strait 48 on the South Shore of Kupreanof Island
9 Oct 74 EA: 9 Sep 74 No EIS

U.S. Forest Service - Sumner Strait 49 approximately 20 miles South of Petersburg,
Alaska 25 Oct 74 EA: 10 Oct 74 No EIS

U.S. Forest Service - Stephens Pass 12, Section 18, T46S, R73E C.R.M. 23 Sep 81
EA: 6 Aug 81 No EIS

U.S. Forest Service - Sumner Strait 15, Sec 35, T61S, R81E approximately 22.5 miles
South of Petersburg, Alaska 16 Aug 76 EA: 26 Jul 76 No EIS

U.S. Forest Service - Skowl Arm 16, Sec 20 & 21, T75S, R85E 11 Jun 82
EA: 25 May 82 No EIS

U.S.F.S. Tongass National Forest - Sea Otter Sound 8, Sec 19, T70S, R79E 11 Jun 80
EA: 3 Jun 80 No EIS

U.S. Forest Service - Sea Otter Sound 5, A cove on the Northern Shore of Heceta
Island near Comp Island 16 Sep 68 EA: None No EIS

U.S. Forest Service, Prince William Sound 15 approximately 52 miles East of Seward,
Alaska 10 Nov 76 EA: 22 Oct 76 No EIS

U.S. Forest Service, Prince William Sound 19 near Whittier, Alaska 12 Oct 77
EA: 26 Sep 77 No EIS

U.S. Forest Service, Prince William Sound 20 approximately 6 miles East of Whittier,
Alaska 25 Oct 77 EA: 26 Sep 77 No EIS

U.S. Forest Service, Port Frederick 24 on Chichagof Island, Alaska 8 Mar 73
EA: None No EIS

U.S. Forest Service, Lynn Canal 23, Sec 29, T36S, R63E 13 May 82
EA: 29 Apr 82 No EIS

Wrangell Lumber Co., Blake Channel 1, Aaron Creek approximately 15 miles Southeast
of Wrangell 8 Mar 74 EA: None No EIS

Wrangell Lumber Co., Eastern Psg. 8, near Point Babbler on the Alaska mainland
11 Mar 74 EA: 28 Feb 74 No EIS

Wrangell Lumber Co., Stikine Strait 3, Etolin Island - 12 miles Southwest of
Wrangell 24 Apr 74 EA: 16 Apr 74 No EIS

Wrangell Lumber Co., Zimovia Strait 15 near Pats Creek 18 Apr 74
EA: 3 Apr 74 No EIS

Wrangell Lumber Co., Zimovia Strait 32, Cemetery Beach approximately one mile South
of Wrangell 21 Feb 74 EA: 8 Feb 74 No EIS

Ketchikan Pulp Co. - Tuxekan Pass 15 Sec. 18, T 70S, R 80E Ketchikan, Alaska
Rejected 11 Aug 80

ATTACHMENT B

Juneau, Alaska

Dear Friend,

I am the staff attorney for the Sierra Club Legal Defense Fund here in Alaska.

As I sit here writing this letter to you, the snow is falling outside my window. The locals call the early snows of winter "termination dust" because it terminates outdoor construction.

For the wilderness of Alaska, "termination dust" is a blessing.

It silences -- for one more season -- the shovels and machines that tear the land apart. But even the deepest winter snows cannot protect Alaska's lands from ruthless exploitation.

By herself, nature may lose the battle for Alaska's lands, as she has in so many of our other states.

That is why the Sierra Club Legal Defense Fund decided to open an office in Juneau, Alaska. Our charter: to take legal action necessary to protect Alaska's priceless natural resources from destruction.

I am writing to caring Americans like you in the lower 48 states because we desperately need your help.

Most people think the battle to save the great Alaskan wilderness was won with passage of the historic Alaska Lands Act of 1980.

Well, I can assure you firsthand that the battle is far from over. In fact, unless we get some immediate help, we could very well lose some of the most beautiful land on Earth, and witness the destruction of pristine wildlife habitat. All in the course of surrendering America's last great wilderness to the bulldozers and chainsaws of the careless developers.

> The Sierra Club Legal Defense Fund is mounting a nationwide campaign to raise the funds necessary for litigation and other legal work needed to enforce the Alaska Lands Act and protect this rightful heritage of all Americans from those who would drill, mine, log, and otherwise thoughtlessly destroy the face of the land and pollute its air and water.

I hope we can count on your help. Being a "conservationist" in Alaska is not a very popular avocation.

And, in a state with a very small population, there are not many of us. Indeed, there is no way we in Alaska can raise the funds needed to defend this vast territory. That's why the Sierra Club Legal Defense Fund must turn to citizens all across the nation.

I want you to know that your contribution is urgently needed and will be effectively put to work. Furthermore, I want to describe to you the key areas that your money will help defend.

ADMIRALTY ISLAND NATIONAL MONUMENT

The native Tlingit Indians call Admiralty Island Kootznoowoo — "The Fortress of the Bears". The name is appropriate. It is home to an estimated 1,000 Alaskan brown bears, or "grizzlies".

Its rugged, snow-capped peaks rise nearly 5,000 feet above majestic forests, delicate tundra meadows, and pristine waters. It is one of the few totally natural ecosystems still in existence.

Until recently, Admiralty Island stood virtually undisturbed since the end of the last Ice Age. But, if a logging firm is not stopped, and stopped soon, a large portion of Admiralty Island will be lost.

Over 23,000 acres of virgin timber are slated for clear cutting by the Sitka-based Shee Atika Corporation. To build a log transfer facility, Shee Atika plans to clear the shores at Cube Cove on western Admiralty Island.

The Sierra Club Legal Defense Fund commissioned scientific experts to study the Shee Atika plan. They found that construction and operation of the log transfer terminal would render Cube Cove useless as a haven for young salmon and as a habitat for Dungeness and King crab.

Simply put, their report stated that such an operation would "irreversibly" degrade water quality and decrease the ability of Cube Cove to support life. The Sierra Club Legal Defense Fund immediately filed an action to contest the logging operation and to ensure enforcement of the strict land management requirements of the Alaska Lands Act.

We then went into court with an emergency motion and won a temporary restraining order halting the clear cutting at Cube Cove. So far, the logging company has been prevented from implementing its destructive plan. But this corporation seems determined to continue its efforts to log on Admiralty Island.

The value of Admiralty's natural resources are inestimable and we simply can't let up in our fight to save the Island. We must do everything we can to keep it as it has been for 10,000 years -- Kootznoowoo, "The Fortress of the Bears"

MISTY FJORDS NATIONAL MONUMENT

Misty Fjords National Monument embodies all that is precious in Alaska. It is larger than any single wilderness in the entire lower 48 states -- nearly 2.2. million acres. Tragically, its survival is now threatened by U.S. Borax's plan to dig the world's largest open-pit molybdenum mine in the very heart of the monument.

This "ultimate pit" will be approximately two miles wide and will take 70 years to dig. Every day for 70 years, Borax will dump 60,000 tons of potentially toxic mining waste into the pristine waters of the Misty Fjords.

And, of course, in an effort to support an operation of this size, Borax plans to build roads, a town site near the mine, and facilities to handle the constant stream of boat, barge, aircraft, and helicopter traffic.

The Sierra Club Legal Defense Fund has vigorously opposed careless development in the Misty Fjords. Over the past several years, we have protected Misty Fjords National Monument with a series of legal battles which, thankfully, we have won so far.

In fact, we have just won our biggest victory, this time before the Ninth Circuit Court of Appeals. The Court not only upheld our injunction, but also established an important precedent for all future litigation under the Alaska Lands Act.

While we are elated with the Ninth Circuit's sweeping decision, we now face the immediate and difficult task of enforcing the Court's strict reading of the environmental standards. While enforcement will require expensive scientific experts, we believe that Misty Fjords deserves our continued efforts.

HERBICIDE SPRAYING

Since the 1950's, the Alaska Railroad has sprayed toxic herbicides, including "Agent White" -- one of the defoliants used in the Vietnam War -- along its routes from Seward to Fairbanks.

The chemicals have contaminated crops, livestock, and drinking water along the 470 mile route, and endangered fish and wildlife throughout the area.

The Sierra Club Legal Defense Fund represented an organization of residents living along the railroad who are concerned about the health effects of the herbicide. We have won the initial round of legal battles in the U.S. District Court. But we expect renewed efforts to reinstate the practice and must be prepared to defend against it.

It's a sad fact that when a law as monumental as the Alaska Lands Act is passed following years of intense debate, the fight to protect the land, water, air, and wildlife does not end with victory. In fact, a new battle takes its place: a quiet, expensive, technical fight without fanfare or headlines -- the legal fight to enforce the Act and to protect the delicate environmental balance from irreparable damage.

The Sierra Club Legal Defense Fund is justifiably proud of its successful record in Alaska and in courtrooms across the country. We have won or achieved substantial gains in 80% of our cases. (In Alaska, our rate of success has been even greater -- we have prevailed in all the cases we have filed in the last two years.)

However, we are increasingly concerned about the cost of our legal efforts. Unlike the big corporations we are taking on in the courtrooms, the Sierra Club Legal Defense Fund does not have enormous financial resources.

Consequently, we must turn to caring Americans for help. Help to pay for expert testimony, for scientific studies, for filing fees, for other critical court costs.

That is why I am writing to ask you to help save the great Alaskan wilderness by making your contribution to the Sierra Club Legal Defense Fund today.

Your immediate and tax-deductible contribution, regardless of size, will enable us to save this land for literally pennies an acre. Frankly, I can think of no investment that can pay bigger dividends.

But please let me know we can count on you. Please send as generous a contribution to this legal effort as you possibly can.

Sincerely,

Durwood Zaelke

Durwood J. Zaelke, Jr.
Attorney
Sierra Club Legal Defense Fund

ATTACHMENT C

Durwood J. Zaelke. Attorney at Law

Juneau, Alaska

Dear Friend,

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over, please

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Until recently, Admiralty Island stood virtually undisturbed since the end of the last Ice Age. But, if a logging firm is not stopped, and stopped soon, a large portion of Admiralty Island will be lost.

Over 23,000 acres of virgin timber are slated for clear cutting by the Sitka-based Shee Atika Corporation. To build a log transfer facility, Shee Atika plans to clear the shores at Cube Cove on western Admiralty Island.

The Sierra Club Legal Defense Fund commissioned scientific experts to study the Shee Atika plan. They found that construction and operation of the log transfer terminal would render Cube Cove useless as a haven for young salmon and as a habitat for Dungeness and King crab.

Simply put, their report stated that such an operation would "irreversibly" degrade water quality and decrease the ability of Cube Cove to support life. The Sierra Club Legal Defense Fund immediately filed an action to contest the logging operation and to ensure enforcement of the strict land management requirements of the Alaska Lands Act.

In March 1983, the federal government settled the first part of our law suit; they agreed to suspend the federal permit for the log transfer facility and to prepare a full environmental impact statement.

But, in an attempt to get around the settlement, the logging company planned to transfer by helicopter 244 acres of trees that were cut this summer, and dropped into the waters along Admiralty's coast.

On July 15, 1983, a federal court granted our motion for a preliminary

(next page, please)

injunction requiring a Clean Water permit before the logs can be discharged from a helicopter. The courts specifically found that the operation threatened the subsistence culture of the tiny village of Angoon, the only settlement on Admiralty.

The value of Angoon's subsistence culture and the natural resources it depends upon is inestimable. We must do everything we can to keep it as it has been for 10,000 years -- Kootznoowoo, "The Fortress of the Bears".

MISTY FJORDS NATIONAL MONUMENT

Misty Fjords National Monument embodies all that is precious in Alaska. It is larger than any single wilderness in the entire lower 48 states -- nearly 2.2 million acres. Tragically, its survival is now threatened by U.S. Borax's plan to dig the world's largest open-pit molybdenum mine in the very heart of the monument.

This "ultimate pit" will be approximately two miles wide and will take 70 years to dig. Every day for 70 years, Borax will dump 60,000 tons of potentially toxic mining waste into the pristine waters of the Misty Fjords.

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In fact, we have just won our biggest victory, this time before the Ninth Circuit Court of Appeals. The Court not only upheld our injunction, but also established an important precedent for all future litigation under the Alaska Lands Act.

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(over, please)

throughout the area.

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But please let me know we can count on you. Please send as generous a contribution to this legal effort as you possibly can.

Sincerely,

Durwood J. Zaelke, Jr.
Attorney
Sierra Club Legal Defense Fund

P.S.: I'm enclosing a snapshot taken of the Misty Fjords to give you a better idea of the beautiful land you can help save.

Comments.
Page 1

- "Careless Developers" - Shee Atika is not quote for hearings office DEC
- "Thoughtlessly destroy the face of the land & pollute" we are not, renewable resource - latest study.

~~Page~~
- "Conservationist" - Sierra Club is not by definition -

Page 2.
- "Totally natural ecosystems" not true Angoon is There
- "undisturbed since Ice Age" not True - logging 1920-30's
- "logging firm" Also Tlingit's but not mentions
- "a large portion ~~be~~ of Admiralty Island will be lost" no true, less the 2%, will grow back
- "Plans to clear shores at Cube Cove" only above 30% of cove, buffer left on 20%, 50% untouched.
- "SCLDF commissioned scientific experts to study". one experts testimony was not admitted because it was shown to be not from an expert, other witness

was a help, not a hindrance to Shee Atika in DEC hearing.

- "Cube Cove useless" not true - DEC
- "irreversibly degrade water quality" - not true DEC
- "strict land management req'd of Alaska Lands Act" - ?
- [- "EIS" - 1st on a transfer facility in NE. Has COE up in Arms -]
- "attempt to get around the settlement", within our rights
- "preliminary injunction" overturned after judge had facts. However to late to log which hurt Shee Atika.
- "Courts specifically found that the operation threatened the subsistence culture of..." - not true.
- "Value of Angoon's..." not true
- "same for 10,000 years" not true, logging

15 September 1983

Sierra Club Legal Defense Fund
1424 K Street N.W., Suite 600
Washington, D.C. 20005

Attention: Mr. Durwood J. Zaelke, Jr.

Mr. Zaelke:

I just received in the mail, a letter from your office in Juneau. In that letter you described the efforts you are involved in, in attempting to protect various areas in Alaska. I am an individual who enjoyed my trips to Southeastern Alaska and I have always felt that it was a beautiful and special place. I think that I am interested in assisting the Sierra Club. However, I am also a little bit conservative. For this reason, I want you to send to me whatever data you have as background on your work at Admiralty Island and Misty Fjords.

One of the high points in my time spent in Southeast Alaska was a brief stay at Angoon. The people that I stayed with in that town were absolutely delightful and the fishing in Kootznoowoo Inlet was unbelievable. I would be very sad and unhappy if the area was truly spoiled. I want to know what is going on in the area. In this way if things are as terrible as you make them sound, I would want to share in helping. I would like to know who this logging firm is that would spoil the area. Not just their name, but also who is "behind them".

You have also described a planned U. S. Borax mine at Misty Fjords. You indicated that some 60,000 tons of waste would enter the waters of the area. What sort of waste is this? Also, you indicated that the Ninth Circuit Court of Appeals has established important precedents for litigation under the Alaska Lands Act. I am curious and want to find out what these requirements are and how will they help protect the place I love.

As I said earlier in the letter, I care about Alaska and do not want to see it spoiled. Because of this, I want to find out what has happened and what is happening in the area. It seems that your goals are appropriate and if the information you provide to me satisfies me, I would be more than happy to send funds to you.

Thanking you in advance.

Tom Bekey
5618 - 162nd N.E.
Redmond, Washington 98052

Senator STEVENS. Mr. Chairman.

Senator MURKOWSKI. Senator Stevens.

Senator STEVENS. I noted your comment about the abuse of the legal process as far as the attorneys for the other side. By whom are they employed? The Sierra Club?

Mr. BAENEN. Well basically, when I talk about abuse of process, abuse of the judicial process, I was always brought up to believe in practice law, that if you had an issue and you wanted to get it litigated and you thought that you were entitled, you went off to court and you did it.

What they are doing is filing all sorts of lawsuits and then doing eveything they can to have them not come to decision, because when they come to decision, they have got to deal with the facts; they have got to deal with the merits. And Lord knows they find facts and merits embarrassing.

Senator STEVENS. In these actions, are they actions in which court costs can be assessed against the plaintiff?

Mr. BAENEN Oh, we would not want to deal with anybody that is accountable. The Sierra Club, as a general proposition in Federal court, is not accountable because, at least in the ninth circuit, they have adopted a rule that they are a, quote, public interest group, and therefore, in terms of bonds, they only have to put up a nominal bond, so the fact that they may cause Shee Atika to lose $25,000 a month in increased interest that they must pay because of a lis pendens that precludes them from getting adequate financing means that they might have to put up a $200 bond.

The problem is, you are dealing with people who are not accountable. They are accountable only to their own philosophy and their own policy. They do not feel themselves accountable to what Congress said; they do not feel themselves accountable to anybody except themselves. But they will, at all times, put down that they are here to protect—the American people. I am not so sure that the American people think that the Sierra Club is protecting them, when they are fighting to preclude the development of 23,000 acres on Admiralty Island, when there is about a 980,000-acre national monument there, at the expense of 1,900 Native shareholders.

But when they send out a fundraising letter, you would not know that is the case. I have appended to my written statements two fund raising letters that the Sierra Club sent out, and I defy any fair man or woman to read those statements and not say they are misleading.

The first statement refers to Shee Atika as a logging company, like we were Weyerhaeuser. It talks about how we are going to rape, ruin, and run, how we are cutting national monument lands. It does not talk about a Native corporation; it does not talk about it being Settlement Act lands; it does not talk about these are private lands that were conveyed by Congress. Good Lord, you would think Shee Atika was Weyerhaeuser in terms of size.

Now again, as I say, the the second letter they are starting to shift now; they are becoming more subsistance oriented in their attacks.

Senator STEVENS. Well, now you know how we felt for 7 years. The real problem is that the people that now claim credit for establishing that monument do not realize that the Native claims extended to the island as a whole, and had Congress not settled those claims, the monument could not have been established, really.

I do have a problem, though, with the comments you are making about the attorneys who are representing what purports to be a public interest entity. If they are taking advantage of the legal process, I want to look into that.

I am particularly concerned about the fact that they do not have to post a bond and that they are getting tax-free contributions to support their lawsuit against a small group of Native people who are trying to find some way to utilize their inheritance.

It really disturbs me quite a bit that we constantly find the Sierra Club as the active entity in these areas, whether it is the EPA area, dealing with variances that may end up by closing both mills in Ketchikan and Sitka or the problem of exploration of the Arctic Wildlife Refuge, or the problem of the Alaska Railroad, or the problem of Shee Atika. In every instance, we are dealing with tax-free money that comes to a group of people who apparently have no standards for fairness.

I think we ought to find some way in the judicial system to bring that about. I would welcome your suggestion of what we might do to try to bring about a system of fairness at least in our judicial system that does not apparently seem to be there.

Mr. BAENEN. Senator, I have, as a matter of fact, in my own office, under consideration, some proposals that I am eventually going to make. They are unrelated, of course, to the specific problem we are directing our attention to today, but they are generated by that problem.

I, as a practicing lawyer, am not going to stand by and watch this without seeking somehow to see that it does not happen in the future to somebody else.

Senator STEVENS. Well, at least I think we ought to think about filing for disbarment of any attorney that sends out asking for contributions on a tax-free basis and makes assertions that are not true. At the very least, we ought to join together and demand that if a lawyer like that is going to practice in Alaska, come to Alaska, he not be a member of the Alaska bar to do it. We ought to have some responsiveness as far as the Alaska bar is concerned in maintaining at least a system of fairness in dealing with subjects like this.

I have seen these letters, and I have seen others that have gone out, and it does seem to me that there ought to be some action from our own bar association on subjects like that. That is not freedom of speech that we are talking about. We are talking about an attorney seeking tax-free contributions from the public on the basis of statements that are not true.

Thank you, Mr. Chairman.

Senator MURKOWSKI. Thank you very much, Senator.

Senator STEVENS. I see that my good friend is here, and I must go to another meeting.

Senator MURKOWSKI. It is appropriate that you are here and I thank you very much for coming.

I am very pleased, Congressman Young, that you could join us. We have just concluded the first panel consisting of the witnesses that need no introduction to you; I am sure you know Ms. Staton and other members of the board of Shee Atika.

We have not had any questions yet. I deferred to Senator Stevens for his opening remarks and observations, and there were a few followup questions. I welcome your opening remarks and any extended comments that you would care to make.

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. Mr. Chairman, I thank you for allowing me to appear before you today, and in deference to time and to the witnesses who have just testified, I can either make an opening statement now, or you can ask the questions, whatever is your pleasure.

Senator MURKOWSKI. No, I would prefer that you proceed.

Mr. YOUNG. I want to thank the panel for being here. I am sorry I missed your testimony, although we have discussed the problems facing Shee Atika over the years.

I want to compliment the chairman for holding these hearings. I think it is important that we do have oversight of this problem of Shee Atika and the due settlement that Congress wished Shee Atika to achieve under ANILCA and, yes, in three other acts of Congress.

Mr. Chairman, the Congress has spoken loud and clear that Shee Atika does have a right on Admiralty Island. They have a right to endeavor to set an economic base. I have said publicly in Alaska, and I am saying here today, that there have been outside influences. They have been primarily the Sierra Club; yes, that all-American group that has taken and, I think, misused their power, their influence, in taking away basic rights between brother and sister and father and daughter. They have destroyed the continuity of a group in southeast Alaska.

Any time a group misuses the legal body to try to achieve their own basic selfish goals, I think it is a great disservice to the system.

Again, I want to say, Mr. Chairman, I will submit my written testimony to you, but primarily, I want to put it on the record that the Congress did act in 1971 to allow the corporation to choose lands on Admiralty Island. It was done; Shee Atika so chose so many acres. It was opposed by Angoon. We again restated this in the omnibus bill, and then again, of course, in the act of 1980.

Each time the right was given to Shee Atika to achieve an amount of timber land to use as they see fit. Again, we see the Sierra Club involved, and other individuals from the environmental community meddling with a problem they should have nothing to do with.

Hopefully, this hearing will serve two purposes: To clear up Shee Atika's problems; to see that they do have their economic base; and to expose the charade of an organization that is supposedly for the betterment of the environment of the United States. I think in fact that they have been a very misleading element. I work with them each day. I watch what they try to do each day in my committee, Mr. Chairman. You are relatively new to this field, but each day they try to impose their philosophy upon the people who live off and on the land.

Mr. Chairman, again I compliment you and the panel. But, as I have told you, each one of you personally, as long as I sit where I am, I am going to see that you get your just dues, and that is the right to so many acres of land on Admiralty Island and the amount of moneys that you should receive. You will receive it if I have anything to do with it.

Thank you, Mr. Chairman.

[The prepared statement follows:]

PREPARED STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Thank you, Mr. Chairman: I would like to commend you, and the other members of the committee, including my colleague, Senator Murkowski, for scheduling this hearing on a matter of great importance to Alaska and the Congress.

As the members of this committee know, oversight of congressional actions is one of the most important roles to be carried out by those of us in Congress. It is extremely important to follow up on the real-world implementation of federal laws to insure that the intent of Congress is carried out. With regard to the subject matter of this hearing, ANCSA oversight hearings have played an important role in monitoring the implementation of congressional intent and have led to the enactment of 90 amendments to ANCSA since 1971.

Some of these amendments have dealt specifically with Shee Atika, the Alaska Native corporation involved here. Shee Atika is a small native corporation representing Natives in Southeast Alaska. Since the land available for selection for Shee Atika involved developed land, the natives were required to select rural lands away from their homes. The land selected included a parcel of land on Cube Cove on Admiralty Island. This land was to be used for a small log transfer facility. This facility is precisely the type of small business which Congress envisioned for Native village corporations when ANCSA was enacted.

As you know, one of the principal purposes of enacting the Alaska Native Claims Settlement Act in 1971 was to provide Alaska Natives with the means to become economically self-sufficient. This was a novel yet central theme of ANCSA—the economic independence of Alaska Natives. To achieve this goal, Congress authorized the transfer of nearly 44 million acres and $956 million to Alaska Natives. This was the essential promise of ANCSA—that Congress would provide Natives with the means to provide for their own people through economic development and private ownership and use of land. We must live up to that promise.

Since ANCSA was enacted, many of the Native corporations have struggled to become successful and provide jobs for their people. It is difficult for any business to start up, but the difficulties were compounded for native corporations seeking to develop economies in remote and isolated locations. For Shee Atika, these problems were made even worse by a determined effort of a large national environmental organization to use the courts to block any use of Shee Atika's land.

Twelve years after passage of ANCSA, Shee Atika is still being denied the opportunity to use their land on Admiralty Island. It is important to remember that this is private land which Congress has repeatedly recognized is that of Shee Atika to develop consistently with federal and state environment laws.

Three separate federal laws recognize the rights of Shee Atika with respect to its land. Besides the initial promise of ANCSA, the Alaska delegation successfully supported a section to be included in the Alaska National Interest Lands Conservation Act of 1980 which specifically confirmed title to the Cube Cove property and directed the Secretary of the Interior to convey this land to Shee Atika. This amendment was made necessary by the litigation filed by the Sierra Club which would have prevented conveyance of lawfully selected lands for many years.

Eighteen months after passage of ANILCA, the Sierra Club again filed suit; this time in Washington, DC, in an attempt to invalidate the legislatively-manadated conveyance. At the same time, the Sierra Club filed a lis pendens in the recording district of Juneau, Alaska in order to place a cloud on title and prevent Shee Atika from obtaining financing for the log transfer project. Again, Congress moved to live up to its promise to Shee Atika by including an amendment in the fiscal year 1983 Interior Appropriations bill which again confirmed title in Shee Atika.

Finally, after three federal laws recognized the rights of this Native corporation, the Sierra Club turned to the state courts and environmental regulators to thwart the use of the Cube Cove property. In July of this year, a state environmental hearing officer found no basis for the Sierra Club claims. The hearing officer found: "there is no creditable evidence that the installation of the proposed log transfer facility will adversely impact recognized subsistence use."

In addition, the officer found: "the evidence demonstrates that this facility may very well be far superior environmentally to any other currently operating in Southeast Alaska."

The record of litigation in these cases repeatedly show that the Sierra Club claims are baseless.

Mr. Chairman, this hearing will show the sad record of a small group of Alaska Natives struggling to build a safe, environmentally sound business on their private land while being sued and harrassed at every point by a large, well-financed national environmental organization. Twelve years of congressional effort and 3 federal laws are being thwarted. Congress, the courts, and state environmental officers have approved of the efforts of Shee Atika to build on its land. Yet the Sierra Club sues on.

Again, we must act to insure that the congressional promise to Alaska Natives is met. For this reason, I welcome this hearing and would be glad to assist this committee in any effort that insures that congressional intent is carried out.

Thank you Mr. Chairman. I would be glad to respond to any questions you or the other members of the committee may have.

Senator MURKOWSKI. Thank you very much, Congressman Young.

You certainly are welcome to join with us for as much time as you have available.

Mr. YOUNG. I have no questions. I would like to attend for as many minutes as I can. We are in process of debating Lebanon on the House floor, and that is the reason I am late.

Senator MURKOWSKI. Thank you very much, Congressman.

I have a series of questions that I would like to start with Ms. Staton.

You indicated, Ms. Staton, that because of the Sierra Club, your corporation was in substantial difficulty brought about by the various delays and the monetary consequences associated with those delays.

What, in your opinion, is the reason for the Sierra Club's extraordinary interest in your affairs, as opposed to the affairs of any other regional or village corporation that may be actively developing timber lands in southeastern Alaska? Why Shee Atika? Why not Cape Fox over near Ketchikan, which is adjacent to a national monument?

Ms. STATON. I wish I knew the answer to that. I cannot understand why we are constantly being picked on by the Sierra Club. We were the first ones to ever do an environmental impact statement and spend $500,000, which we did not have. They have taken us to 13 court cases in the past year and a half. Every time we turn around, we have to go to court.

If the Sierra Club could answer why they do not want us on Admiralty Island, I would like to know. That is our land.

Senator MURKOWSKI. If I recall correctly, you stated that the Sierra Club has not told the truth, or words to that effect. Can you cite a specific instance or frame of reference on which you might elaborate a little bit?

Ms. STATON. I think basically what I said was the Angoon people have not been telling the truth.

Senator MURKOWSKI. Excuse me. I stand corrected.

Ms. STATON. On our land selection, they said that we selected our land fast and it was rubberstamped. We took years and lots of money, borrowed money from Sealaska, to make our land selection.

They say they filed suit against Shee Atika to protect the residents for subsistence culture. They did not even know where Cube Cove was. There are a million acres on Admiralty Island, and we take 2 percent of 1 million acres.

They say also that deer are leaving Angoon because we did do cutting there. That is such an untruth that every logger and every fisherman in the State of Alaska will tell you, when you have done your cutting, the deer come to where the cutting is because then it has fresh growth.

I could go on and list other areas.

Senator MURKOWSKI. Can you provide for the record the value of your corporation according to the accounts. I recognize that in your testimony you said there was some $6.5 million in indebtedness.

Ms. STATON. Yes.

Senator MURKOWSKI. I am interested in knowing two figures. What is the estimated value of your corporation with the land, assuming that you can use it for productive purposes, as opposed to what it would be worth in the event that you were never allowed to develop the resources associated on those lands, obviously, the timber.

Ms. STATON. The value of our land and timber today is $176 million.

Senator MURKOWSKI. $176 million, all right. That is the value of the timber. What is the value of your corporation? I understand you have other assets.

Ms. STATON. We have minerals and subsurface rights that belong to Sealaska.

Senator MURKOWSKI. They belong to the regional corporation as opposed to you as a village corporation?

Ms. STATON. Yes.

Mr. YOUNG. Will the gentleman yield?

Senator MURKOWSKI. Yes, I will yield to my colleague.

Mr. YOUNG. When she says she has minerals and subsurface rights, this includes the same body of land that the timber is on?

Ms. STATON. Yes.

Mr. YOUNG. That is what I wanted to lead up to, that we are not talking about two separate value factors; we are talking about the same acreage.

Ms. STATON. Right. But I think the value would go up if you counted the minerals. It would not be worth only $176 million.

Senator MURKOWSKI. All right, but the point is, if the timber is worth $176 million and you do not have the use of the timber, you have $6.5 million of indebtedness on the timber——

Ms. STATON. Right.

Senator MURKOWSKI. Do you have any other significant net worth?

Ms. STATON. The hotel. Roger can address that.

Mr. SNIPPEN. Mr. Chairman, could I answer the question?

Senator MURKOWSKI. Yes.

Mr. SNIPPEN. Basically, our major asset is the timber base. It is $176 million. Our total assets are approaching $183 million, so if you look at $183 million minus $176 million, we are looking at about $6 million.

Senator MURKOWSKI. All right.

Mr. SNIPPEN. Now, that also includes part of the hotel. However, the hotel, as I am sure you are well aware, was built entirely with borrowed funds, and as it depreciates each year, so does your asset base.

Senator MURKOWSKI. You have basically answered my question. So it is satisfactory to conclude that this timber is basically the substantive, proven net worth of the corporation at the current time.

I am wondering, in regard to your current financial status, how you were able to mortgage an asset in the timber that was being litigated? Were you actually able to convey to a lender a deed of trust or some type of interest in that timber? If I were going to take a mortgage and knew that you might not ever be able to develop it, I would question what kind of security I had. I am interested in knowing, from a lender's point of view, what happens to the lender if you do not pay.

Mr. SNIPPEN. In the particular loan that I had addressed earlier for $100,000, we had 3,000 acres of cut-over land at Katlian Bay which was selected by the corporation for, hopefully, some day in the future, commercial development as a deepwater port.

Senator MURKOWSKI. Is this on Admiralty Island?

Mr. SNIPPEN. No, this is near Sitka.

Senator MURKOWSKI. All right.

Mr. SNIPPEN. Its total appraised value is $810,000. At present, there would be absolutely no way for an economic return. It is a future type of investment that they were looking at. That land is what was pledged or collaterized for the $100,000 loan. They will not accept the Admiralty Island lands for collateral with that clouded title.

Senator MURKOWSKI. I appreciate that being made available for the record.

I would like to ask Mr. Herman Kitka a question. Why was the selection made on Admiralty Island as opposed to some other area? I assume that you were involved in the affairs of the corporation at that time.

Mr. KITKA. That selection was not our first selection. We made the selection elsewhere, and we had to move on account of conservation interests in those areas.

Senator MURKOWSKI. Where was your first selection, do you recall?

Mr. KITKA. It was on Chichagof Island, west Chichagof. Our own local chapter of the Alaska Conservationists Society said they would not endorse us; they would fight us on that land selection.

Senator MURKOWSKI. How long have you been familiar with Admiralty Island? Have you cruised the beaches, fished the areas? Do you personally have extensive knowledge of the area?

Mr. KITKA. 1928 was the first year I went commercial fishing, and I became aware of where Admiralty Island was, because at that time we fished all around that island in Chatham Strait.

Senator **Murkowski**. To you knowledge—and I will ask the Forest Service later on—have there been any areas that were formerly logged on Admiralty Island?

Mr. **Kitka**. As a young fellow, Hood Bay, from 3 miles south of Angoon and all the way to Village Point was clearcut. In 1927, we used to go there and pick blueberries. It was very abundant over in the logged-off area.

When we selected Hood Bay, we took one of the Sierra Club lawyers and we showed him the land first. He said it was very pretty; we want to keep it that way. That is why we want to keep you folks out.

After he made that statement, we took him into the woods to show him the stumps of the clearcut area a few year back, and Cube Cove was also clearcut. There were rocks set aside on the beach which the Sierra Club claimed was a canoe-launching place. It was not. An A-frame was sitting there, and I happened to know the people that logged it, and some of them are still living in the vicinity.

Senator **Murkowski**. What is the current condition of that land now after having been logged many years ago?

Mr. **Kitka**. Some of those trees that we cut down on the first go-around in November, some of them were over 3 feet.

Senator **Murkowski**. Is it second-growth timber?

Mr. **Kitka**. Second growth. The stumps were still there.

Senator **Murkowski**. Thank you very much, Mr. Kitka.

Mr. Kaczynski, you indicated that the subsistence lifestyle that is enjoyed by the Native peoples of the island would not be, in your professional opinion, affected. Is that more or less based on your historical observation of the fact that Cube Cove had been logged previously, or was that even given consideration?

Mr. **Kaczynski**. That was given consideration, but in addition to that, the resources, the marine resources that are present in Cube Cove are not especially abundant in terms of the traditional subsistence species. The only ones that are really abundant are the mussels and the hard-shell clams. All of the rest of the traditional marine subsistence species are not real abundant in there. There are no anadromous salmon streams, as an example.

In terms of the potential impacts that could occur on Cube Cove, there really are not any. All of the water quality criteria for the State of Alaska and for the Federal criteria will be met by that operation. The dilution factors in the currents in the bay are such that there will be great dilution factors of any potential pollutants that could come in there.

It is these types of considerations that assure me in my own mind and assure me, speaking in terms of our client here, that I can make that assurance to you and to this committee. And I want to make that assurance to the native people that possibly have subsisted there in the past or can subsist there in the future. Those opportunities for subsistence truly will not be greatly affected.

Senator **Murkowski**, Mr. Baenen, in your testimony you inferred that you had received continuous harassment from the Sierra Club with regard to efforts to go ahead and begin to log this area.

Do you have any comments with regard to the fact that the Sierra Club's legal defense fund is a tax-exempt operation and that contributions for that defense fund are tax deductible? My specific question is, do you, sir, enjoy the same privilege in representing Shee Atika? Could Shee Atika go out and solicit funds for their legal defense effort? I would be interested in knowing if there is any governmental form of equity with regard to significant defense funds. Obviously, if you had 13 court cases, the litigation is expensive and the attorneys probably are the only ones that are coming out ahead so far for both sides.

Mr. BAENEN. Well, there is an old Italian saying that a lawsuit is a fruit tree in a lawyer's garden.

We, fortunately or unfortunately, are one of the many creditors of Shee Atika whose forbearance is so important to their continued existence.

I would assume, Senator, that there could be established an independent Shee Atika legal defense fund and that Shee Atika could, through that fund, make some solicitations. I have really not investigated that, and I would want my comments to be subject to check by me, because I am not positive that that could occur, but I suspect it could.

There are, as I understand it, some limitations on what can be done in that area. I think the real problem is not that the Sierra Club legal defense fund survives or lives on donations that are tax free from the vantage point of Shee Atika involved in litigation; it is that in the Federal courts, at least, they are not accountable. They are just not accountable, and if you are not accountable, you do not have to be responsible. It is really that simple.

It is irresponsible to thwart the will of Congress when it has been enacted twice, in my opinion, but then I am just an ordinary citizen. I guess I am one of those that is out to—I believe the expression in one of their fundraising comments was to "deface the face of the Earth."

The need is to make those people accountable. They are more accountable in the State courts, but again, because they operate under the guise of public interest, their accountability is very limited.

So it does not make any difference what you do. I mean, you can file one more frivolous lawsuit. You can file one more frivolous pleading. You can raise asinine arguments. It does not make any difference because nobody is going to hold you to account; they cannot. The worst you might ever do is lose when they get to the merits, in which event you go back to your home base and you say to yourself. Well, we lost, but, boy, we delayed them for 5 years, and we made them spend $500,000, so we have a moral victory.

Senator MURKOWSKI. I appreciate your point of view, and I can certainly understand your frustrations. A good deal of the testimony from this panel has dealt with those specific frustrations.

I happen to have a letter here from the Sierra Club which is in reference to this and a number of other interests which they have in Alaska. By entering this letter into the record, which I do herewith, I do not wish to be construed as being critical of the Sierra Club's objectives. However, I think that their objectives need a greater airing, particularly by the residents of my State.

[The letter follows:]

Sept 1, 1983

Durwood J. Zaelke, Attorney at Law

Juneau, Alaska

Dear Friend,

I am the staff attorney for the Sierra Club Legal Defense Fund here in Alaska.

As I sit writing this letter to you, the snow is falling outside my window. The locals call the early snows of winter "termination dust" because it terminates outdoor construction.

For the wilderness of Alaska, "termination dust" is a blessing.

It silences -- for one more season -- the shovels and machines that tear the land apart. But even the deepest winter snows cannot protect Alaska's lands from ruthless exploitation.

By herself, nature may lose the battle for Alaska's lands, as she has in so many of our other states.

That is why the Sierra Club Legal Defense Fund decided to open an office in Juneau, Alaska. Our charter: to take legal action necessary to protect Alaska's priceless natural resources from destruction.

I am writing to caring Americans like you in the lower 48 states because we desperately need your help.

Most people think the battle to save the great Alaskan wilderness was won with passage of the historic Alaska Lands Act of 1980.

Well, I can assure you firsthand that the battle is far from over. In fact, unless we get some immediate help, we could very well lose some of the most beautiful land on Earth, and witness the destruction of pristine wildlife habitat. All in the course of surrendering America's last great wilderness to the bulldozers and chainsaws of the careless developers.

> The Sierra Club Legal Defense Fund is mounting a nationwide campaign to raise the funds necessary for litigation and other legal work needed to enforce the Alaska Lands Act and protect this rightful heritage of all Americans from those who would drill, mine, log, and otherwise thoughtlessly destroy the face of the land and pollute its air and water.

I hope we can count on your help. Being a "conservationist" in Alaska is not a very popular avocation.

And, in a state with a very small population, there are not many of us. Indeed, there is no way we in Alaska can raise the funds needed to defend our

(over, please)

vast territory. That's why the Sierra Club Legal Defense Fund must turn to citizens all across the nation.

I want you to know that your contribution is urgently needed and will be effectively put to work. Furthermore, I want to describe to you the key areas that your money will help defend.

ADMIRALTY ISLAND NATIONAL MONUMENT

The native Tlingit Indians call Admiralty Island Kootznoowoo -- "The Fortress of the Bears". The name is appropriate. It is home to an estimated 1,000 Alaskan brown bears, or "grizzlies".

Its rugged, snow-capped peaks rise nearly 5,000 feet above majestic forests, delicate tundra meadows, and pristine waters. It is one of the few totally natural ecosystems still in existence.

Until recently, Admiralty Island stood virtually undisturbed since the end of the last Ice Age. But, if a logging firm is not stopped, and stopped soon, a large portion of Admiralty Island will be lost.

Over 23,000 acres of virgin timber are slated for clear cutting by the Sitka-based Shee Atika Corporation. To build a log transfer facility, Shee Atika plans to clear the shores at Cube Cove on western Admiralty Island.

The Sierra Club Legal Defense Fund commissioned scientific experts to study the Shee Atika plan. They found that construction and operation of the log transfer terminal would render Cube Cove useless as a haven for young salmon and as a habitat for Dungeness and King crab.

Simply put, their report stated that such an operation would "irreversibly" degrade water quality and decrease the ability of Cube Cove to support life. The Sierra Club Legal Defense Fund immediately filed an action to contest the logging operation and to ensure enforcement of the strict land management requirements of the Alaska Lands Act.

In March 1983, the federal government settled the first part of our law suit; they agreed to suspend the federal permit for the log transfer facility and to prepare a full environmental impact statement.

But, in an attempt to get around the settlement, the logging company planned to transfer by helicopter 244 acres of trees that were cut this summer, and dropped into the waters along Admiralty's coast.

On July 15, 1983, a federal court granted our motion for a preliminary

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injunction requiring a Clean Water permit before the logs can be discharged from a helicopter. The courts specifically found that the operation threatened the subsistence culture of the tiny village of Angoon, the only settlement on Admiralty.

The value of Angoon's subsistence culture and the natural resources it depends upon is inestimable. We must do everything we can to keep it as it has been for 10,000 years -- Kootznoowoo, "The Fortress of the Bears".

MISTY FJORDS NATIONAL MONUMENT

Misty Fjords National Monument embodies all that is precious in Alaska. It is larger than any single wilderness in the entire lower 48 states -- nearly 2.2 million acres. Tragically, its survival is now threatened by U.S. Borax's plan to dig the world's largest open-pit molybdenum mine in the very heart of the monument.

This "ultimate pit" will be approximately two miles wide and will take 70 years to dig. Every day for 70 years, Borax will dump 60,000 tons of potentially toxic mining waste into the pristine waters of the Misty Fjords.

And, of course, in an effort to support an operation of this size, Borax plans to build roads, a town site near the mine, and facilities to handle the constant stream of boat, barge, aircraft, and helicopter traffic.

The Sierra Club Legal Defense Fund has vigorously opposed careless development in the Misty Fjords. Over the past several years, we have protected Misty Fjords National Monument with a series of legal battles which, thankfully, we have won so far.

In fact, we have just won our biggest victory, this time before the Ninth Circuit Court of Appeals. The Court not only upheld our injunction, but also established an important precedent for all future litigation under the Alaska Lands Act.

While we are elated with the Ninth Circuit's sweeping decision, we now face the immediate and difficult task of enforcing the Court's strict reading of the environmental standards. While enforcement will require expensive scientific experts, we believe that Misty Fjords deserves our continued efforts.

HERBICIDE SPRAYING

Since the 1950's, the Alaska Railroad has sprayed toxic herbicides, including "Agent White" -- one of the defoliants used in the Vietnam War -- along its routes from Seward to Fairbanks.

The chemicals have contaminated crops, livestock, and drinking water along the 470 mile route, and endangered fish and wildlife

(over, please)

throughout the area.

The Sierra Club Legal Defense Fund represented an organization of residents living along the railroad who are concerned about the health effects of the herbicide. We have won the initial round of legal battles in the U.S. District Court. But we expect renewed efforts to reinstate the practice and must be prepared to defend against it.

It's a sad fact that when a law as monumental as the Alaska Lands Act is passed following years of intense debate, the fight to protect the land, water, air, and wildlife does not end with victory. In fact, a new battle takes its place: a quiet, expensive, technical fight without fanfare or headlines -- the legal fight to enforce the Act and to protect the delicate environmental balance from irreparable damage.

The Sierra Club Legal Defense Fund is justifiably proud of its successful record in Alaska and in courtrooms across the country. We have won or achieved substantial gains in 80% of our cases. (In Alaska, our rate of success has been even greater -- we have prevailed in all the cases we have filed in the last two years.)

However, we are increasingly concerned about the cost of our legal efforts. Unlike the big corporations we are taking on in the courtrooms, the Sierra Club Legal Defense Fund does not have enormous financial resources.

Consequently, we must turn to caring Americans for help. Help to pay for expert testimony, for scientific studies, for filing fees, for other critical court costs.

That is why I am writing to ask you to help save the great Alaskan wilderness by making your contribution to the Sierra Club Legal Defense Fund today.

Your immediate and tax-deductible contribution, regardless of size, will enable us to save this land for literally pennies an acre. Frankly, I can think of no investment that can pay bigger dividends.

But please let me know we can count on you. Please send as generous a contribution to this legal effort as you possibly can.

Sincerely,

Durwood J. Zaelke, Jr.
Attorney
Sierra Club Legal Defense Fund

P.S.: I'm enclosing a snapshot taken of the Misty Fjords to give you a better idea of the beautiful land you can help save.

Senator MURKOWSKI. I am going to read a brief portion of this for the record because I think it is germane.

The letter starts out:

> I am the staff attorney for the Sierra Club legal defense fund here in Alaska, and as I sit writing this letter to you, the snow is falling outside my window. The locals call the early snows of winter "termination dust" because it terminates outdoor construction. For the wilderness of Alaska, termination dust is a blessing.

For those of you who are not Alaskan, snow is often referred to as termination dust.

> It silences for one more season the shovels and machines that tear the land apart. But even the deepest winter snows cannot protect Alaska's lands from ruthless exploration.
>
> By herself, Nature may lose the battle for Alaska's lands, as she has in so many of our other States.
>
> That is why the Sierra Club legal defense fund decided to open an office in Juneau, Alaska. Our charter: to take legal action necessary to protect Alaska's priceless natural resources from destruction.

I paraphase:

> I am writing to caring Americans like you in the lower 48 because we desperately need your help. Most people think the battle to save the great Alaska wilderness was won with passage of the historic Alaska Lands Acts of 1980.

Moving down:

> The Sierra Club legal defense fund is mounting a nationwide campaign to raise the funds necessary for litigation and other legal work needed to enforce the Alaska Lands Act and protect this rightful heritage of all Americans from those who would drill, mine, log, and otherwise thoughtlessly destroy the face of the land and pollute its air and water.

The specific reference to Admiralty Island bears some review.

> The Admiralty Island National Monument—the native Tlingit Indians call Admiralty Island Kootznoowoo, the fortress of the bears. The name is appropriate. It is a home for an estimated 1,000 Alaska brown bears or grizzlies. Its rugged snow-capped peaks rise nearly 5,000 feet above majestic forests, elegant tundra meadows and pristine waters. It is one of the few totally natural ecosystems still in existence.
>
> Until recently, Admiralty Island stood virtually undisturbed since the end of the last Ice Age. But if a logging firm is not stopped and stopped soon, a large portion of Admiralty Island will be lost.

I assume that your conclusion is the same as mine, that you, Shee Atika, represent that logging firm.

> Over 23,000 acres of virgin timber are slated for clear-cutting by the Sitka-based Shee Atika Corp. To build a log transfer site facility, Shee Atika plans to clear the shores at Cube Cove on western Admiralty Island.
>
> The Sierra Club legal defense fund commissioned scientific experts to study the Shee Atika plan. They found that construction and operation of the log transfer terminal would render Cube Cove useless as a haven for young salmon and as a habitat for Dungeness and king crab.

I think you have testified that it had previously been cut in the 1920's.

> Simply put, their report stated that such an operation could irreversibly degrade water quality and decrease the ability of Cube Cove to support life. The Sierra Club legal defense fund immediately filed an action to contest the logging operation and to ensure enforcement of the strict land management requirements of the Alaska Lands Act.
>
> In March 1983, the Federal Government settled the first part of our lawsuit. They agreed to suspend the Federal permit for the log transfer facility and to prepare a full environmental impact statement.
>
> But, in an attempt to get around the settlement, the logging company planned to transfer by helicopter 244 acres of trees that were cut this summer and dropped into the water along Admiralty Island's coast.

> On July 15, a Federal court granted our motion for a preliminary injunction requiring a clean water permit before the logs could be discharged from a helicopter. The courts specifically found that the operation threatened the subsistence culture of the tiny village of Angoon, the only settlement on Admiralty Island.

In a further statement from the same release, I quote: "We must do everything we can to keep it as it has been for 10,000 years." That is a long time.

Mr. YOUNG. Mr. Chairman.

Senator MURKOWSKI. Congressman Young.

Mr. YOUNG. I appreciate your reading that letter because about 6 months ago, I took the Sierra Club to task, and I was reprimanded by—and I see he is in the audience—the mayor, who said that no, there had not been outside influence. Whether he knows it or not, the outside influence exists.

The untruths in that letter to the National Sierra Club members are what really disturb me the most. They do not tell you that this is really, again, a group of the same people being divided by decisive outside forces. And clearcutting 23,000 acres; that is nonsense. The large majority of the island; that is nonsense. I can go on and on through this whole program. But that is the type of tactic used to raise money.

I would like to know who the experts were that they commissioned to make this great report. Hopefully, when you get time, when they are up here with the panel, you will ask them, who were these experts that commissioned this report and what studies and where they came from. I think you will probably find out they came out of Washington, DC, and that would be very unfortunate, by the way, with all due respect for the legal people in this room, but that should not happen.

Mr. Chairman, I again thank you for holding these meetings, but I have to go over to another meeting.

Senator MURKOWSKI. Well, you will be pleased to hear the last paragraph of this letter.

Mr. YOUNG. Does it refer to me? I hope so.

Senator MURKOWSKI. No; it does not, but it says:

> Your immediate and tax deductible contributions, regardless of size, will enable us to save this land for literally pennies an acre. Frankly, I can think of no investment that can pay bigger dividends.

My purpose in mentioning this is to demonstrate that those from the outside who read this and who are not aware of your particular interest and your particular point of view, are likely to reach a different conclusion from your own.

I would thank the witnesses of the first panel for their forbearance. I ask that the next panel come before the witness table. Panel number two is the Department of the Interior, represented by Mr. Bill Horn; Colonel Amrine, Corps of Engineers; Mr. Bruce Barrett, Director of the Environmental Protection Agency and Office of Water Enforcement and Permits; Max Peterson, U.S. Forest Service, the Department of Agriculture; and Walter A. Sheridan, Alaska National Interest Lands Act Coordinator.

STATEMENT OF WILLIAM HORN, DEPUTY UNDER SECRETARY, DEPARTMENT OF THE INTERIOR

Mr. HORN. Mr. Chairman, I appreciate the opportunity to appear before the committee and discuss some of the difficulties that Shee Atika has experienced, difficulties brought about by third-party intervention that has been seeking, and seeking, unfortunately, with some degree of success, to prevent the people of Shee Atika from realizing their benefits under the Alaska Native Claims Settlement Act.

I would ask that my entire statement be entered into the record.

Senator MURKOWSKI. Without objection, it is so ordered. It will be entered as if read.

Mr. HORN. Thank you. Of course, as you are aware, I am not unfamiliar with this issue, having worked on it now in the executive branch for the past 3 years, and having spent about 4 years working on this issue in Congress. I have been to Sitka numerous times of course, and have been on Admiralty Island at least six times, so I am familiar with the terrain and a number of the areas in contention.

The starting point for this is the Alaska Native Claims Settlement Act, passed by Congress in 1971 to provide for a fair and just settlement of all claims by Native people in Alaska based on their aboriginal title, and those claims were to be settled through the payment of money and the conveyance of land for economic development, of course including such activities as logging.

Shee Atika, as indicated, is the corporation for the Natives of Sitka, and because of the provisions of the act, it is one of the few corporations that did not participate in the monetary settlement. Their dominant settlement is the land, so land is more important to them than it is, on a relative basis, to the hundreds of other corporations in the State.

Following its incorporation in 1974, Shee Atika proceeded to make its land selections under the regulations promulgated by then-Secretary of the Interior, Rogers Morton, and in March 1974, Shee Atika nominated lands on the southwestern part of Admiralty Island. Of course, the lands that were initially nominated happened to be near areas previously logged under Forest Service contract in the mid-1960's. Admiralty Island has been logged fairly extensively since the turn of the century, and I think the chief of the Forest Service can speak to that issue.

At the time of the initial nominations in 1974, neither Kootznoowoo, Inc., nor the village of Angoon voiced objections at the hearings held first in April 1974. However, the Sierra Club, in May 1974, did object and informed Interior of its objections to Admiralty Island nominations and said that it, the Sierra Club, would sue if an environmental impact statement were not prepared on those withdrawals.

Let me comment that this demand, 9 years ago, by the Sierra Club, was terribly unreasonable, because environmental impact statements were not required and have not been required on any other land to be conveyed to any native corporation in the State of Alaska. No other withdrawal of land for natives has ever been so challenged, even in sensitive areas such as the Arctic National

Wildlife Refuge, the Kodiak Wildlife Refuge, and the areas today that now comprise some of our prime parklands.

Congress, of course, later confirmed this policy of no EIS's for native withdrawals when it enacted section 910 of the Alaska Lands Act in 1980.

In September 1975, the Sierra Club reiterated its opposition to the Shee Atika land selections, arguing that no logging should be allowed to occur and that, furthermore, an EIS should be prepared. This objection was followed by additional discussions and negotiations among the Federal Government, the State, and the Natives.

Following these negotiations, in November 1975, Secretary Morton signed the public land orders withdrawing the land on southwestern Admiralty Island for selections by Shee Atika, Inc., and those are the lands indicated in orange on the map over there.

Secretary Morton made this withdrawal for their selections notwithstanding the Sierra Club's objections, and, of course, this withdrawal occurred 4 years after passage of the Native Claims Settlement Act.

The Sierra Club continued its opposition to Shee Atika receiving the lands and filed suit against the Department as a result of Secretary Morton's withdrawals.

Pending litigation and the inability of the Department to act decisively left Shee Atika in limbo. During this protracted period, Shee Atika used up the small stipend of cash it received in the mid-1970's, and it did so in defending its interest against continued Sierra Club attack. Shee Atika witnesses have talked about some of the financial difficulties they faced.

Congress intervened during the late 1970's in connection with the passage of the Alaska Lands Act to try to resolve this matter. Congress offered Shee Atika approximately 23,000 acres of land on northwest Admiralty Island at Cube Cove in exchange for its relinquishment of lands on the southwestern part of the island around Hood Bay. This exchange was done because the environmental interests had indicated that the Hood Bay lands were far more environmentally sensitive than the Cube Cove area.

Through the enactment of section 506(c), Congress decided to end the long and costly battle between Shee Atika and the Sierra Club and provided that the Secretary of the Interior was directed—the language in the statute is "shall"; it was not a discretionary act on the Secretary's part—to convey the lands to Shee Atika on northwest Admiralty Island.

The Department went through the ministerial functions to issue the necessary conveyance, and our Bureau of Land Management issued the necessary documents in July 1981.

Still, the Sierra Club was not satisfied. Once again, it tried to stop the land conveyance by filing a series of administrative appeals within the Department. The Department concluded that this was a travesty and a clear contravention of congressional intent. The departmental appeals were summarily dismissed. The Department ruled in favor of Shee Atika, and the lands were conveyed to the corporation by Secretary Watt in December.

Three months later, the Sierra Club filed suit again, this time in Federal court, to not only overturn the conveyance but it also filed a lis pendens in June 1982 in Alaska on Shee Atika's land.

This is the first and only time in the 12-year history of Claims Act implementation that a suit has been filed against an actual conveyance.

In December 1982, Congress reacted to this attempt to thwart its will by passing section 315(b) of Public Law 97-394 in which Congress confirmed in all respects the conveyance of those lands in an attempt to demonstrate its resolve that Shee Atika obtain the lands and to vindicate the Department's actions under section 506(c). Of course, Congress knew full well, as it knew full well in the beginning, that the lands conveyed to Shee Atika at Cube Cove were to be developed for logging to provide economic benefits to the 1,900 Native peoples of Sitka.

In summary, Congress has enacted three separate pieces of legislation regarding these lands on Admiralty. First it enacted the Claims Act which Secretary Morton concluded entitled Shee Atika to these lands on Admiralty Island.

Second, Congress enacted section 506(c) of ANILCA, which specifically directed the Secretary to transfer the lands on North Admiralty to Shee Atika.

Third, in section 315 of the December 1982 Appropriations Act, Congress confirmed the conveyance of these lands after the Secretary had made the necessary conveyance under 506(c).

In all of these actions, Congress was fully aware that Admiralty Island contains valuable timber and that Shee Atika intended to harvest the timber on its property.

The specific portion of the island at issue, the 23,000 acres at Cube Cove, of course, comprises less than 2 percent of the island, and the actions taken by those who seek to prevent Shee Atika from exercising its right to its land represent a deliberate and continuing attempt to thwart the will of Congress.

Now, having finally received its land 11 years after the passage of the Claims Act, Shee Atika moved to develop its land and to provide long-awaited economic benefits to its people.

Senator **Murkowski**. I am going to ask you to summarize. It has been about 7 minutes.

Mr. **Horn**. All right.

We have gone through the list, of course, of the different actions that occurred subsequently, not only challenging the conveyance but challenging the necessary development permits.

The bottom line is that because the land is Shee Atika's only basic asset, the cloud of title that now exists on that land despite congressional action must be removed. Because Shee Atika received no money under the Claims Act, the only asset it has is that land, and it needs to be able to offer that up for collateral.

As long as Shee Atika's land is tied up by Sierra Club legal action, it is barely able to survive. Now, for almost 10 years, the Congress and five secretaries—Morton, Hathaway, Kleppe, Andrus, and Watt—have all been committed to facilitating the transfer of lands in satisfaction of Shee Atika's Claims Act settlement.

Shee Atika deserves the benefits it received from Congress in 1971. We believe that the Congress must do everything possible to correct the continuing injustice being visited on these people.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF WILLIAM HORN, DEPUTY UNDER SECRETARY, DEPARTMENT OF THE INTERIOR

Mr. Chairman, Members of the Committee, I appreciate this opportunity to appear today to discuss the difficulties experienced by Shee Atika because of third party actions seeking to prevent Shee Atika from realizing their rightful benefits under the Alaska Native Claims Settlement Act (ANCSA).

ANCSA was passed on December 18, 1971, to provide for a fair and just settlement of all claims by Natives in Alaska, based on aboriginal land claims, through payment of money and the conveyance of land for economic development such as logging.

Section 14(h)(3) of ANCSA made special provision for Natives residing in areas which had originally been native villages but were now populated primarily by non-natives. When the natives in these four areas (Sitka, Juneau, Kodiak and Kenai) incorporated, each resulting corporation was entitled to the conveyance by the Secretary of the Interior of up to 23,040 acres of land. Under section 14(h)(3), this land was to be within reasonable proximity of the municipalities. These "urban" corporations, however, were not entitled to share in the monetary provisions of ANCSA.

Shee Atika is the corporation for the Natives of Sitka. Because of its status as an urban corporation it received no funds under ANCSA. It did receive, however, pursuant to Section 14(g) of the Act of January 2, 1976 (Public Law 94-204), $250,000 to be used solely "for planning, development, and other purposes for which the corporations...are organized under the Settlement Act." (89 Stat. 1154).

Following its incorporation in 1974, Shee Atika proceeded to make its land selections under the regulations promulgated by Secretary of the Interior Morton. Those regulations required that requested withdrawals were to be made from within an area determined by drawing a circle with a fifty-mile radius with the city of Sitka as the center of that circle. Under ANCSA, the urban corporations were to nominate four townships for withdrawal by the Department. The Department then withdrew two of the four townships, from which the corporation made its final selection of one township.

Nominations were filed by Sitka (Shee Atika) and Juneau (Goldbelt) in March 1975, and hearings were held in April. Both cities nominated lands on Admiralty Island near Angoon in the Mitchell Bay, Hood Bay and Kanalku Bay areas. While Shee Atika also nominated lands on Kuiu Island and at Katlian Bay on Baranof Island, neither Kootznoowoo, Inc. nor the Native Village of Angoon voiced objections to the nomination until early May, 1975. However, environmentalist groups and some individuals did object at the April hearings.

Public interest in the Admiralty Island lands, located in the Tongass National Forest, led to further discussion on the lands to be withdrawn. As early as May, 1975, the Sierra Club informed the Department of the Interior of its objection to the land selections on Admiralty Island and said it would sue if an environmental impact statement (EIS) was not prepared. This demand by the Sierra Club was unreasonable because EISs were not required on any other land to be conveyed to any Native corporation and because there would not be time to complete an EIS before the selection deadline. No other withdrawal of lands for Natives has ever been so challenged, even in highly sensitive areas such as the Arctic National Wildlife Refuge and the National Wildlife Refuges at Kodiak, Clarence Rhodes and Cape Newenham.

Congress confirmed that no EIS was required when it enacted the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Specifically, section 910 of ANILCA states that the National Environmental Policy Act (NEPA) shall not be construed as requiring preparation or submission of an EIS for conveyance or other actions which lead to the issuance of conveyances to corporations pursuant to ANCSA.

Shee Atika selected land on the southwestern part of Admiralty Island, near areas that had been logged in the mid-1960's. In September, 1975, the Sierra Club opposed the selections of Shee Atika arguing that: (1) No logging activity should be allowed; and (2) An EIS should be prepared.

After several months of further discussions and negotiations, among the Federal Government, the State and the Natives, Secretary Morton signed the Public Land Order withdrawing land on the southwestern part of the island for Shee Atika on November 21, 1975. Secretary Morton made this withdrawal notwithstanding the Sierra Club's objections. This occurred almost four years after the passage of ANCSA.

In 1976, the Sierra Club, continuing its opposition to Shee Atika receiving land on Admiralty Island, filed suit against the Secretary of the Interior as a result of the land withdrawals (Sierra Club v. Andrus, D. Alaska, filed January 7, 1976). Shee Atika intervened as a defendant in that suit.

Kootznoowoo, Inc., also sued the Secretary over the Admiralty Island withdrawals (Kootznoowoo, Inc. v. Andrus, D. Alaska, filed December 22, 1975). Shee Atika intervened in that suit as well. Both Kootznoowoo, Inc. and the Sierra Club challenged the authority of the Secretary to make the Admiralty Island lands available for withdrawal under ANCSA.

Pending litigation and the failure of the Department to act decisively left Shee Atika in limbo. During this protracted period, Shee Atika used up the small stipend received in the mid-1970's and in defending its interests, Shee Atika's cash flow was exhausted.

Settlement negotiations were undertaken to resolve the matter. Congress offered Shee Atika approximately 23,000 acres of land on northern Admiralty Island at Cube Cove in exchange for its relinquishment of lands around Hood Bay (Section 506 of ANILCA). Through section 506, Congress decided to end the long and costly battle between Shee Atika and the Sierra Club.

In section 506(c) of ANILCA the Secretary of the Interior was directed to convey to Shee Atika the lands on North Admiralty Island, provided that Shee Atika and Sealaska relinquish their claims to the lands previously selected on southwestern Admiralty Island (lands made available to it by Secretary Morton). These claims were relinquished and the Department issued a decision to convey the lands to Shee Atika in July, 1981, pursuant to this Congressional directive. The Sierra Club still was not satisfied. The Sierra Club and Angoon once again tried to stop the land conveyance when they administratively appealed this decision on the grounds that public easements and land-use regulations were inadequate. In December, 1981, the Department ruled in favor of Shee Atika and the lands were immediately conveyed to Shee Atika.

In March, 1982, the Sierra Club again sued the Department (Sierra Club, Inc. v. Watt, et al.) in Federal Court here in Washington to overturn the conveyance and filed a lis pendens in June, 1982, in Alaska on Shee Atika's land. This is the first and only time in the 12 year history of ANCSA implementation that a suit has been filed against an actual conveyance. In August, 1982, a motion was filed to transfer the Washington case to Alaska, but the judge has not yet heard the motion.

In December, 1982, Congress acted again to confirm the receipt by Shee Atika of full rights to its holdings on Admiralty Island. Section 315(b) of the Act of December 30, 1982, (P.L. 97-394) Congress "confirmed in all respects" the conveyance of those lands in an attempt to demonstrate its resolve that Shee Atika obtain these lands and to vindicate the Department's actions under section 506(c) of ANILCA. Congress knew that lands conveyed to Shee Atika at Cube Cove were to be developed for logging.

In summarizing Congressional action, three major steps have been made regarding the conveyance of lands on Admiralty Island to Shee Atika. First, under ANCSA, the Department implemented regulations that allowed Shee Atika to select lands on Admiralty Island for future conveyance to it. Second, under section 506(c) of ANILCA, the Secretary of the Interior was directed to transfer the lands selected by Shee Atika on Admiralty Island to Shee Atika because they relinquished their other selections. Third, in section 315 of the December, 1982 Appropriations Act, Congress confirmed the conveyance of the lands on Admiralty Island to Shee Atika, in spite of challenges made by the Sierra Club. In all of these actions, Congress was fully aware that Admiralty Island is covered with valuable timber, and that Shee Atika intended to harvest the timber on its property. The specific portion of the island at issue, the 23,000 acres at Cube Cove, comprise less than 2% of the area of the island. The actions taken by those who seek to prevent Shee Atika from exercising its rights to this land represent a deliberate and continuing attempt to thwart the will of Congress.

Having finally received its land 11 years after enactment of ANCSA, Shee Atika moved to develop its land and to provide long awaited economic benefits to its people. In order to develop its commercial timber holdings economically and efficiently, Shee Atika needs a log transfer facility on the lands at Cube Cove. The necessary permit applications had been made by Shee Atika to the State of Alaska and the Corps of Engineers.

To qualify for the Section 404 permit, Shee Atika was required to obtain and in fact did obtain from the Alaska State Department of Environmental Conservation (DEC), a Certificate of Reasonable Assurance that its proposed log transfer facility is in compliance with the state water quality standards. The Sierra Club and Angoon have challenged the issuance of the Certificate of Reasonable Assurance before the DEC.

As a result of motions for injunctive relief filed by Sierra Club in the Superior Court in Alaska, the Certificate of Reasonable Assurance was suspended pending the outcome of the administrative appeal. DEC has decided that appeal in Shee Atika's favor. However, the Sierra Club has continued to obstruct Shee Atika and has exercised its appeal rights under Alaska state law by filing a petition for review of that decision in the Alaska Superior Court. That petition is currently pending.

Shee Atika also received its Section 404 permit from the Army Corps of Engineers. However, the City of Angoon filed suit in Federal District Court for the District of Alaska against the Secretary of the Army and numerous other Federal defendants. Angoon alleged that the issuance of the Corps of Engineers permit violated numerous environmental statutes, including the requirement under the National Environmental Policy Act, that an Environmental Impact Statement (EIS) be prepared (Angoon v. Marsh, D. Alaska). The Sierra Club intervened in that action, and Shee Atika subsequently moved to intervene. Before Shee Atika's motion to intervene was granted, however, the Federal defendants, the Sierra Club and Angoon entered into a stipulation whereby Shee Atika's Corps permit was suspended pending the completion of an EIS. This stipulation was entered into over the strong objection of Shee Atika. Claims raised under the Coastal Zone Managment Act, Clean Water act, and Alaska National Interest Lands Conservation Act are still pending in that suit.

Most recently, Shee Atika has filed two lawsuits to have the lis pendens lifted, one in Federal court (Shee Atika, Inc. v. Sierra Club, Inc., D. Alaska, filed April 29, 1983), and one in State court (Shee Atika, Inc. v. Jeff Jeffers, Recorder, Juneau Recording District, et al., filed May 9, 1983). We are requesting the Department of Justice to file an amicus brief in support of Shee Atika.

With respect to Sierra Club v. Watt, this past week a court in Washington asked for briefs by November 18, 1983, from the Sierra Club and the United States on what has transpired over the past 15 months. Arguments to be set for December 2, 1983, will consider the motion to transfer the case to Alaska or to dismiss the suit for failure to join Shee Atika as a necessary party. Just as it appeared that this case could begin to move, the City of Angoon filed a motion to intervene here in Washington raising the specter of further delay.

Through all of this, Shee Atika has desperately sought funds to keep the corporation in business pending the full-scale implementation of its logging operation. It already owes a substantial sum of money to its regional corporation, Sealaska. Its efforts to obtain loans from commercial lenders have, of course, been severely hampered by the lis pendens on the title to its Admiralty Island lands. That cloud on its title has made it impossible for Shee Atika to use its land, essentially its only real resource, as collateral.

Just recently, Shee Atika has asked us to help. Shee Atika recently applied for a $4 million loan under the Bureau of Indian Affairs (BIA) direct loan program for the purpose of road construction, logging facility development and general administrative costs for its corporation. The application is currently being reviewed by the BIA. However, the problems with current status of the land are among the factors to be considered before the loan application could receive favorable consideration.

In conclusion, because Shee Atika's only asset is its land, the cloud on that title must be removed. Shee Atika received no money under ANCSA and its decade-old fight against the Sierra Club has exhausted its funds. As long as Shee Atika's land is tied by the Sierra Club's legal action, it is barely able to survive. For almost ten years, the Congress along with previous Administrations have sought to facilitate the transfer of lands in satisfaction of Shee Atika's entitlement. Shee Atika deserves the benefits granted it by Congress in 1971. We must do everything possible to correct the continuing injustice being visited on these people.

Senator MURKOWSKI. Thank you very much, Mr. Horn.

Our next witness is Mr. Barrett. We welcome you to the committee and look forward to your testimony. You are from the Environmental Protection Agency?

Mr. BARRETT. Yes, sir.

Senator MURKOWSKI. And you come to us as specifically director, is that correct?

Mr. BARRETT. That is correct, Director of Water Enforcement and Permits for EPA.

Senator MURKOWSKI. Thank you. We look forward to your testimony. Please proceed.

STATEMENT OF BRUCE BARRETT, DIRECTOR, OFFICE OF WATER ENFORCEMENT AND PERMITS, ENVIRONMENTAL PROTECTION AGENCY

Mr. BARRETT. Thank you.

I, sir, will try to be brief and summarize to the extent I can.

As you know, I am here to discuss EPA's role in permitting the log transfer activities in Alaska by Shee Atika under section 402 of the Clean Water Act.

Now, as I am sure you know, section 402 requires a permit for the discharge of pollutant from a point source to waters of the United States.

Shee Atika proposed to construct a log transfer facility in Cube Cove, 30 miles north of Angoon, on the west coast of Admiralty Island. They applied to the Corps of Engineers for a Clean Water Act section 404 permit for dredge and fill activities for this facility in 1981. The corps subsequently issued that permit.

The city of Angoon and the Sierra Club then brought suit against Shee Atika, the Corps of Engineers, and EPA to block this permit on January 13 of this year, arguing both that the environmental assessment for the facility was inadequate and that a section 402 permit from EPA was needed.

In order to get the logs cut in the summer of 1983 off the island, since they did not have their log transfer facility in place, the company proposed as an interim measure to transfer the logs from the harvest areas on the island to Chatham Strait, where they would be placed in a log boom for subsequent transfer to a processing facility.

The city of Angoon and the Sierra Club both argued that this helicopter operation, putting the logs into the water, would constitute a point source under the Clean Water Act, and they succeeded in obtaining an injunction blocking Shee Atika's helicopter operations.

Following this action, representatives of Shee Atika, together with staff from your office and from the staff of Senator Stevens, met with some of my staff in EPA in Washington on August 9 of this year to discuss the process required to get a permit under the Clean Water Act. At that meeting, we discussed the type of potential discharge from a log transfer operation and what information we would require from them in order to develop the permit.

Because Shee Atika felt weather would not allow operations after September 15, it was pretty clear that a permit could not be issued in time for the 1983 operations.

On September 14, the court reconsidered and dissolved the injunction prohibiting the helicopter transfer. The court also held, however, that the helicopter operation would in fact result in a point source discharge and therefore required Shee Atika to obtain a permit for their future operations. In other words, they said, you can do it this year without a permit, but in the future, you've got to have an NPDES permit from EPA.

On September 12, then, Shee Atika submitted to EPA region X in Seattle applications for permits to cover the helicopter operation, a log storage facility, and the log transfer operation.

I want to point out to the committee that this is a most unusual case for EPA. The focus of our 402 permit program historically has been in controlling pollutants from discharge from industrial facilities and from municipal sewage treatment plants, and we have always focused our permitting efforts and resources in that direction.

We have always interpreted the Clean Water Act to mandate 402 permits for point source facilities where there is a reasonable expectation that a pollutant will be discharged. The Clean Water Act defines a point source as any discernible, confined, and discrete conveyance such as a pipe, ditch, or channel. However, case law indicates that logs being dropped from a helicopter would also be a point source discharge.

Now, as we have previously discussed with representatives of Shee Atika, EPA stands ready to assist them in obtaining any necessary permits as expeditiously as possible. In response to questions raised at the August 9 meeting that I referred to earlier, Shee Atika has supplied us with information pertinent to developing the NPDES permits for the proposed activities.

My office, along with representatives from other EPA offices, is reviewing the potential environmental impact of the log transfer activities and potential permit conditions.

EPA has two alternatives in permitting facilities. Traditionally, we prepare and issue individual permits for a specific facility. However, we may also prepare a general permit which covers in a single action a number of similar operations in one geographic area.

Based on the knowledge that we have at this time, we believe development of a general permit for this purpose could be warranted.

On October 14, I asked our region X office in Seattle to promptly explore the development of such a general permit. We will develop an individual permit in the event the general permit process is not used or is for some reason delayed.

I understand that transfer activities are not expected to begin until this spring, this coming spring, or at least until the log transfer facility has been constructed. Our past experience indicates that this should provide sufficient time to develop a draft permit for public notice and a final permit in response to comments received, unless there are unforeseen delays.

We will make every effort to expeditiously issue this permit so as not to delay future log transfer operations.

That completes my prepared statement. I will be happy to answer any questions you may have.

[The prepared statement follows:]

PREPARED STATEMENT OF BRUCE R. BARRETT, DIRECTOR, OFFICE OF WATER ENFORCEMENT AND PERMITS, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good afternoon Mr. Chairman and Members of the Committee. I am Bruce Barrett, Director of the Office of Water Enforcement and Permits. It is a pleasure to be here today to discuss Shee Atika Incorporated and EPA's role in permitting its log transfer activities in Alaska under section 402 of the Clean Water Act. As you know, section 402 requires a permit for the discharge of pollutants from a point source to waters of the United States.

BACKGROUND

In connection with its stated intention to harvest timber on Admiralty Island, Shee Atika proposed to construct a log transfer facility in Cube Cove, 30 miles north of the city of Angoon on the west coast of Admiralty Island. Shee Atika applied to the Corps of Engineers for a Clean Water Act § 404 permit for dredge and fill activities related to this long term log transfer facility on April 15, 1981. The Corps subsequently issued the § 404 permit.

The City of Angoon and the Sierra Club brought suit against Shee Atika, the Corps of Engineers, and the EPA to block this permit on January 13, 1983, arguing both that the environmental assessment for the facility was inadequate, and that a § 402 permit was needed. The Corps of Engineers voluntarily agreed with the plaintiffs to prepare an environmental impact statement and to suspend the § 404 permit until its completion.

In order to get logs cut during the summer of 1983 off Admiralty Island, the company proposed, as an interim measure, an operation to transfer logs by helicopter from the harvest areas to nearby Chatham Strait. There they were to be placed in a log boom for subsequent transfer to a processing facility. The City of Angoon and the Sierra Club both argued that this helicopter operation would be a point source discharge under the Clean Water Act, and they succeeded in obtaining an injunction blocking Shee Atika's proposed helicopter operations.

Following this action, representatives of the Shee Atika together with staff from the offices of Senators Murkowski and Stevens met with EPA in Washington on August 9, 1983, to discuss the process to obtain an NPDES permit under the Clean Water Act. We discussed the types of potential discharge from the log transfer operation and what information we would need to consider in developing a permit. Because Shee Atika felt weather would not allow operations after September 15, 1983, it was clear that a permit would not be issued in time for 1983 operations.

On September 14, 1983, the court reconsidered and dissolved the injunction prohibiting the helicopter transfer. The Court also held that the helicopter operation would, in fact, result in a point source discharge and, therefore, required Shee Atika to obtain an NPDES permit for their future operations. On September 12, 1983, Shee Atika submitted to EPA Region X applications for permits to cover the helicopter operation, a log storage facility, and the log transfer operation.

I should point out to the Committee that this is a most unusual case for EPA. The focus of the 402 permit program is for controlling wastewater discharges from industrial facilities and municipal sewage treatment plants, and we have focused our permitting efforts and resources in that direction. We have always interpreted the Clean Water Act to mandate 402 permits for point source facilities where there is a reasonable expectation that a pollutant will be discharged. The Clean Water Act defines a point source as any discernible, confined, and discrete conveyance such as a pipe, ditch, or channel, which would not appear to describe logs being dropped from a helicopter. However, we understand that future log transfer operations will be of the more traditional nature, and these operations are more readily amenable to permitting under section 402.

PRESENT STATUS

As previously discussed with Shee Atika, the Agency stands ready to assist them in obtaining any necessary EPA permits as expeditiously as possible. In response to questions asked at the August 9 meeting, Shee Atika has supplied us with information pertinent to developing NPDES permits for the proposed activities. My office, along with representatives from other EPA offices, is reviewing the potential environmental impact of the log transfer activities and potential permit conditions.

The Agency has two alternatives in permitting facilities. Traditionally, the Agency prepares and issues an individual permit for a specific facility. However, we may also prepare a general permit which covers in a single action a number of similar operations in one geographic area. Based on the knowledge we have at this time, we believe development of a general permit for this purpose could be warranted. On October 24, 1983, I asked our Region X office to promptly explore the development of such a general permit. We will develop an individual permit in the event the general permit process is not used or is delayed.

I understand that transfer activities are not expected to begin until this spring or at least until the log transfer facility has been constructed. Our past experience indicates that this should provide sufficient time to develop a draft permit for public notice and a final permit in response to comments received unless there are unforeseen delays. We will make every effort to expeditiously issue this permit so as not to delay future log transfer operations.

This concludes my prepared statement. I would be pleased to answer any questions members of the Committee may have.

[Subsequent to the hearing the following correspondence was received for the record:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 16 1983

OFFICE OF
WATER

Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Hart Office Building H-83H
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to a question posed by Senator Murkowski at the oversight hearing held by your committee on the matter of Shee Atika Incorporated on November 2, 1983. He requested that we respond in writing as to why EPA did not appeal the U.S. District Court's decision that Shee Atika's log transfer operation was a point source discharge under the Clean Water Act. I have attached a response from EPA's Office of General Counsel presenting the Agency's legal reasoning for our decision.

In addition, I would like to explain the policy reasoning in support of our decision not to appeal. My office decided that it would be more expeditious to move ahead with writing a permit authorizing these discharges as a means of resolving this part of the dispute, rather than face a lengthy and probably unsuccessful appeals process. As I testified at the hearing, we have already told our Region X office in Seattle to proceed with issuing a general permit to cover log transfer facilities in Alaska, and, if necessary, an individual permit to cover the Shee Atika log transfer operation. Region X has already started to review information on these facilities and has arranged a meeting in their office on November 22, 1983 with EPA staff from the Alaska Operations Office. At this meeting they will outline the basic general permit terms and conditions and identify the areas where more information is needed. Subsequent to the meeting additional information will be collected, analyzed, and used in the development of the draft permit and fact sheet. My office will work closely with Region X in writing and publishing this permit.

I would like to reiterate my commitment to make every effort to publish a permit by the end of March, 1984. I expect to have a draft general permit published by mid-January 1984. However, as you are aware, EPA has no control over the other parties involved in the general permit review process, including Federal and State Agencies and public participants. EPA might also face litigation after issuance of the general permit which could further delay its effective date. We will, of course, work to avoid such problems and resolve any that do arise as soon as possible. If you need any additional information on these matters please call me at 755-9187.

Sincerely,

Bruce R. Barrett

Bruce R. Barrett, Director
Office of Water Enforcement
and Permits

LEGAL BASIS FOR EPA'S DECISION NOT TO APPEAL DISTRICT COURT ORDER DIRECTING SHEE ATIKA TO OBTAIN AN NPDES PERMIT

On September 14, 1983, the District Court refused to enjoin Shee Atika from conducting helicopter log transfer activities, but ordered them to apply for an NPDES permit for future helicopter transfer activities. EPA did not appeal this order because, as discussed below, case law clearly supports the Court's application of NPDES permit requirements under the Clean Water Act (the Act) to Shee Atika's proposed helicopter log transfer activities.

The Clean Water Act prohibits "the discharge of any pollutant by any person" unless the discharge is pursuant to, inter alia, an NPDES permit. 33 U.S.C. §§1311(a), 1342(a)(1). The term "discharge of a pollutant" is defined as "any addition of any pollutant from any point source". 33 U.S.C. §1362(12). The term "point source" is defined as "any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged" and includes vessels. 33 U.S.C. §1362(14). In Barcelo v. Brown, 478 F. Supp. 646 (D. P.R. 1979) the court held that Navy aircraft dropping bombs into navigable waters were point sources under the Clean Water Act and therefore were subject to NPDES permit requirements. The Supreme Court subsequently accepted the District Court's interpretation of the term point source to include Navy aircraft. Weinberger v. Romero-Barcelo, 456 U.S. 306 (1981). The helicopters used by Shee Atika to place logs in Chatham Strait cannot be distinguished from Navy aircraft and thus would be considered point sources.

As defined by the Act, "pollutant" means:

> "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water."

33 U.S.C. §1362(6). Information submitted by Shee Atika indicates that the helicopter log transfer operation would result in the addition of logs and some amount of peeled bark to the waters of Chatham Strait. Both logs and bark are biological materials. Further, legislative history to the Clean Water Act evidences congressional intent to include at a minimum what was covered by the Rivers and Harbors Act of 1899, 33 U.S.C. §407 (Refuse Act). See, S. Rep. No. 92-414, 1972 U.S. Code Cong. and Ad. News 3742; accord, United States v. Hamel, 551 F. 2d 107 (6th Cir. 1977). The Refuse Act prohibits the discharge of any "refuse" into navigable waters. In United States v. Kennebec Log Driving Co., 399 F. Supp. 754 (D. Me. 1975), aff'd, 530 F.2d 446 (1st Cir. 1976), the court interpreted the term "refuse" as used in the Refuse Act to specifically include "peeled bark and sunken logs" from log driving activities. Thus, since the term "pollutant" as used in the Clean Water Act includes all that encompassed by the term "refuse" in the Refuse Act, the logs and bark placed by Shee Atika into Chatham Strait would be considered "pollutants".

Senator MURKOWSKI. Thank you very much, Mr. Barrett.

I assume, then, it is a consequence of the dictate of the court that a point source discharge can indeed be interpreted as a log being placed in the water.

Mr. BARRETT. That is correct, sir.

Senator MURKOWSKI. So, technically, you might assume that there are substantial violations occurring in Alaska.

Mr. BARRETT. There may very well be, sir. We have typically not dealt with that type of an operation, as I indicated in my testimony.

Senator MURKOWSKI. You do not know how many log dumps are in operation in Alaska?

Mr. BARRETT. Several. I do not know the number, but I am sure there are several. And, by the way, that is the reason we are exploring the general permit along with an individual permit—to cover the other facilities as well.

Senator MURKOWSKI. I am a little confused. What differentiates whether you drop a log in the water by helicopter or place it in the water by helicopter? Is there any difference at all?

Mr. BARRETT. Sir, I do not know. I guess, in view of the court decision we have had, the answer to that would be, no: that placing the log in the water by virtue of the fact that bark or constituents in the bark of the log could be construed as a pollutant. It would not make any difference if you dropped it in or rolled it in or laid it in very gently.

Senator MURKOWSKI. It sounds to me that if this is enforced, you are going to have to expand your staff rather dramatically to monitor all the logs that are put in the water in this country.

Mr. BARRETT. Well, again, I think we are going to pursue the course of the general permit and try to include in the general permit appropriate conditions that relate to management practices, that minimize the amount of bark, for example, that might be knocked off the log or the amount of time the logs might be stored in the water before being moved somewhere else; perhaps diversion of storm-water runoff from a processing site or something to that effect.

Senator MURKOWSKI. With regard to the expeditious processing of a permit, have you ever done one of these before? Have you ever issued an NPDES permit?

Mr. BARRETT. Oh, certainly, we have issued thousands of permits.

Senator MURKOWSKI. For the logging industry?

Mr. BARRETT. Not for this type of operation, so far as I know. We have issued permits for other timber processing facilities.

Senator MURKOWSKI. But not for a log transfer operation.

Mr. BARRETT. But, as far as I know, we have not issued a permit, certainly not for one dropping logs from a helicopter. I think I can answer that unequivocably. Whether we have issued a permit for a more traditional type of log transfer facility, I don't know, but I don't think so, sir.

Senator MURKOWSKI. When did you start processing the permit?

Mr. BARRETT. Well, we received the application in September, so we are——

Senator MURKOWSKI. When are you going to have an answer?

Mr. **Barrett**. Well, it will be a matter of going through the process of developing the permit. Typically, it takes about 6 months to issue a permit. There is a process you go through. You have to receive the application, of course. We have done that.

Senator **Murkowski**. Well, let's assume the permit is in process, and you have 6 months. Six months from September is March.

Mr. **Barrett**. Yes. So, yes, we should be able to have a permit by then.

Senator **Murkowski**. Can you give this committee assurance that you are going to be able to act upon that permit—either grant it or deny it—in 6 months?

Mr. **Barrett**. Yes, sir.

Senator **Murkowski**. All right. The committee takes you at your word. We will expect action on the permit, either a granting or denial, within a 6-month timeframe, by the end of March.

Mr. **Barrett**. We will give this a very high priority and will make every effort to have the permit out in that period of time.

Senator **Murkowski**. Our next witness is Colonel Amrine. Colonel, we welcome you. You are here from the Corps of Engineers, which of course plays a very important role in any activity associated with development along the coastal States and territories of our Nation.

Please proceed.

STATEMENT OF COL. ROBERT M. AMRINE, ASSISTANT DIRECTOR OF CIVIL WORKS (PACIFIC), OFFICE OF THE CHIEF OF ENGINEERS, U.S. ARMY CORPS OF ENGINEERS

Colonel **Amrine**. Thank you, Senator.

I am Colonel Amrine, assistant director of Civil Works for the Pacific coast including Alaska, Office of the Chief of Engineers.

Accompanying me at this hearing, though not sitting at the witness table, are Mr. Curtis Clark, our energy and regulatory policy advisor, and Mr. Lance Wood, our assistant chief counsel responsible for environmental law and regulatory programs.

Before I proceed with the substance of my testimony, I would like to advise the committee that Colonel Neal Saling, the Alaska District Engineer, who had been invited by this committee to present testimony, is not able to appear in view of the pending suit involving the Department of the Army.

The suit concerns issuance of a permit to Shee Atika, Inc., to construct a log transfer facility. As district engineer, Colonel Saling will be called upon to review his permit decision upon completion of the additional environmental studies required as a result of the litigation.

Questioning of Colonel Saling by this committee, no matter how carefully worded, could subject any decision ultimately reached on the permit to further legal challenge. As a consequence, I am here today as a witness generally familiar with the facts of the case as well as with the corp's overall permit process, but as one who is removed from the actual permit decision process.

The Secretary of the Army, acting through the Chief of Engineers, is responsible for administering various Federal laws that regulate certain types of activities in or affecting navigable waters and the oceans.

The authorities for the corps' regulatory program are based primarily on sections 9 and 10 of the River and Harbor Act of 1899, section 404 of the Federal Water Pollution Control Act, as amended, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

Corps regulations specify procedures to be followed in reviewing applications for Department of the Army permits. These regulations provide that each permit decision must be made on the basis of the probable impact of the proposed activity on the public interest.

The regulations identify a number of factors that comprise the overall public interest, all of which must be carefully weighed to determine an appropriate balance between "the benefits which reasonably may be expected to accrue from the proposal" and the "reasonably foreseeable detriments" of the proposal.

A variety of procedureal and other review mechanisms exist for use by the district engineer in determining the facts necessary to perform this balancing process. These include consideration of data compiled from the review of previous permit applications in the same area or of a similar nature; responses to a public notice issued on the permit application; information obtained through public hearings and communications with interested Federal, State, and local agencies; preparation of an environmental assessment; and, for those cases where the district engineer determines that the proposal may have significant impact on the quality of the human environment, preparation of an environmental impact statement.

Shee Atika applied on April 13, 1981, for a Department of the Army permit to construct the log transfer facility. The facility called for the placement of various fills in areas subject to permit requirements and for the construction of structures to accommodate the transfer of logs from the land where they were to be harvested and sorted, to the marine waters where they were to be rafted together and towed to a mill for processing.

A public notice regarding the permit application was issued on May 15, 1981, and public meetings were held on December 16, 1981, in Angoon, AK, and on December 17, 1981, in Juneau, AK.

On March 10, 1982, the State of Alaska issued a water quality certification pursuant to section 401 of the Clean Water Act through the Alaska Department of Environmental Conservation, and a consistency determination in accordance with the Alaska Coastal Zone Management Program, through the Division of Policy Development and Planning.

These State actions are essential prerequisities to the issuance of a Department of the Army permit.

On April 17, 1982, a Department of the Army permit was issued to Shee Atika, Inc., by the Alaska District Engineer. This action was based upon his findings of fact, on a section 404(b)(1) evaluation, and on an environmental assessment that concluded that the issuance of the permit would not constitute a major Federal action significantly affecting the quality of the human environment.

On May 16, 1972, the city of Angoon and the Sierra Club requested a State adjudicatory hearing on the water quality certification issued by the State of Alaska. The State conducted the hearing in the spring of 1983, and I will discuss that further in a moment.

A civil action was filed on January 13, 1983, in the U.S. District Court for the District of Alaska by the city of Angoon, the Sierra Club, the Wilderness Society, and numerous residents of Angoon. The suit was against the Department of the Army, the U.S. Department of Agriculture, and the Environmental Protection Agency.

The suit alleges that issuance of the permit for the log transfer facility violated the National Environmental Policy Act, the Alaska National Interest Lands Conservation Act, the Clean Water Act, the Alaska Native Claims Settlement Act, and the Coastal Zone Management Act.

On March 30, 1983, a stipulation was signed by the U.S. Department of Justice and the plaintiffs, represented by attorneys for the Sierra Club. This stipulation provided that the Corps of Engineers would prepare an environmental impact statement and that the permit would be suspended until the EIS is completed.

During March 1983, the Alaska Department of Environmental Conservation held the requested adjudicatory hearing to reconsider its certification. As a result of this hearing, the State agency on September 29, 1983, amended the certificate of reasonable assurance required by section 401 of the Clean Water Act by adding two stipulations to the original certification.

One stipulation would require the permittee to establish a monitoring program for bark deposition. The other would limit the overpressures created by blasting and constructing the log-sorting yard.

The corps held public scoping meetings for the EIS on June 7, 1983, in Sitka, AK, and on June 8, 1983, in Angoon, AK. The EIS is currently being written. Completion of the draft EIS is scheduled for December 15, 1983, and public hearings are expected during the last week of January 1984. Completion of the final EIS is scheduled for March 15, 1984, with completion of its review by May 1, 1984.

The committee should be aware that the Department of the Army has undertaken a broad program of regulatory reform in an effort to do away with unreasonable delay and duplication in the Corps of Engineers' regulatory program. For example, we are submitting this week two OMB proposed revisions to the EIS processing regulations, which are intended to reduce by several months the time that it takes to complete an EIS for permit application.

Senator MURKOWSKI. I wonder if you could summarize your remarks, Colonel.

Colonel AMRINE. Yes, sir.

It should be noted, however, that these proposals, if adopted, would not go into effect for several months and would not be available to expedite the Shee Atika, Inc., EIS process.

Sir, this concludes my testimony. I would be happy to respond to any general questions you may have.

Senator MURKOWSKI. Thank you very much, Colonel.

[Subsequent to the hearing the following correspondence was received for the record:]

DEPARTMENT OF THE ARMY
ALASKA DISTRICT CORPS OF ENGINEERS
POUCH 898
ANCHORAGE ALASKA 99506

November 10, 1983

Nov 17 [illegible] 37 PM '83

REPLY TO
ATTENTION OF:
Regulatory Functions Branch
Special Actions Section

Honorable Frank H. Murkowski, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Murkowski:

This letter is in reference to the November 2, 1983 hearing of the Select Committee on Indian Affairs on the matter of Shee Atika Incorporated and the U.S. Army Corps of Engineers involvement with this native group's log transfer facility.

I was not able to testify, as requested by Senator Mark Andrews, due to the reasons discussed at the hearing by Colonel Robert M. Amrine, Assistant Director of Civil Works (Pacific), Office of the Chief of Engineers. I regret any inconvenience my absence may have caused. As a result of these circumstances I have been briefed on the hearing's proceedings. In response to the Committee's request I have, under separate cover, supplied information on the scheduling of the Cube Cove Environmental Impact Statement for Shee Atika's log transfer facility.

If I can be of further assistance, please contact me directly. If further details are desired by your staff contact can be made with Mr. Gene V. Augustine of my Regulatory Functions Branch at (907) 552-4942.

Sincerely,

Neil E. Saling
Colonel, Corps of Engineers
District Engineer

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO
ATTENTION OF:
Office of Policy

10 NOV 1983

Honorable Frank H. Murkowski
United States Senate
Washington, D. C. 20510

Dear Senator Murkowski:

As requested by the Select Committee on Indian Affairs during the Oversight Hearing on Shee Atika, Incorporated, on November 2, 1983, enclosed is the current schedule for the preparation of the Environmental Impact Statement by our Alaska District on the proposed log transfer facility at Cube Cove, Chatham Strait, Admiralty Island, Alaska.

Sincerely,

Robert M. Amrine
Colonel, Corps of Engineers
Assistant Director of Civil Works,
Pacific

Enclosure

Reference: Shee Atika, Inc./EIS for Proposed Log Transfer Facility/Cube Cove, Chatham Strait, Admiralty Island, Alaska.

Sequence of Events	Original Schedule	Revised Schedule**
1. Stipulation Signed Originating EIS	30 March 1983	
2. Revised Application Rec'd	13 April 1983	
3. Notice of Intent in Fed Register	13 May 1983	
4. Public Notice of Scoping Meetings	13 May 1983	
5. Conduct Scoping Meetings (Sitka and Angoon)	7,8 June 1983	
6. DEIS to EPA & Public	15 December 1983	16 January 1984
7. Notice DEIS in Fed. Register*	1 January 1984	2 February 1984
8. Conduct Public Hearings (Sitka and Angoon)	25,26 January 1984	28,29 February 1984
9. FEIS to EPA & Public	15 March 1984	23 April 1984
10. Notice FEIS in Fed Register*	1 April 1984	3 May 1984
11. Prepare Record of Decision	1 May 1984	7 June 1984

* Mandatory Review

** Awaiting information from Shee Atika, additional field work required.

Note: Much of the time between scoping and the DEIS was used to analyze comments, design field studies, and collect needed information.

US Army Corps
of Engineers
Alaska District

Public Notice

Date: November 10, 1983
Identification No.: 071-OYD-810133 Chatham Strait 92
In reply refer to above Identification Number

Environmental Resources Section
Pouch 898
Anchorage, Alaska 99506

CUBE COVE LOG TRANSFER FACILITY
ENVIRONMENTAL IMPACT STATEMENT
SUMMARY OF SCOPING RESPONSES
CUBE COVE, CHATHAM STRAIT
ADMIRALTY ISLAND, ALASKA

To All Interested Parties:

Enclosed is a summary of the comments received by the Alaska District, Corps of Engineers in response to scoping activities for an environmental impact statement associated with a Department of Army Permit application from Shee Atika, Incorporated to construct and operate a log transfer facility at Cube Cove, Chatham Strait, Admiralty Island.

Additional information may be obtained by contacting the Alaska District at (907) 552-3861. Any written comments should be forwarded to the Alaska District prior to November 30, 1983.

District Engineer
U.S. Army, Corps of Engineers

Enclosure

CUBE COVE LOG TRANSFER FACILITY
CHATHAM STRAIT/ADMIRALTY ISLAND
SUMMARY OF SCOPING RESPONSES

SCOPING PROCESS

Shee Atika, Inc. proposes to construct a log transfer facility at Cube Cove, Chatham Strait, Admiralty Island so that they may develop the private lands conveyed to them by Congress with the passage of ANILCA. Scoping for an environmental impact statement (EIS) associated with this project was announced publicly with a Notice of Intent published in the Federal Register May 13, 1983. A public notice was distributed May 13, 1983 to Federal, State, and local agencies, organizations and individuals interested in the project. This notice announced public scoping meetings in Angoon and Sitka and encouraged written comments. Public meetings were held on June 7, 1983 in Sitka, Alaska and on June 8, 1983 in Angoon, Alaska. Transcripts of these meetings were made and are available from the Alaska District for the cost of printing. In addition, scoping letters were sent to agencies and organizations requesting information and identification of issues. Comments and information submitted to the Alaska District prior to April 7, 1982 are in the permit files and have been reviewed.

In response to the scoping process, comments were received from Federal, State, and local agencies and individuals. Comments from the city of Angoon, the Angoon Community Association, the Sierra Club, the Sierra Club Alaska Task Force, the Wilderness Society and the Southeast Alaska Conservation Council were consolidated and submitted by the Sierra Club Legal Defense Fund, Inc.

The proposed breakwater and transfer facilities in Cube Cove (see attached map) require a Department of Army permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The decision to be made is whether to reinstate a Department of Army permit for a log transfer facility in Cube Cove, deny the permit or issue a permit with conditions to protect the environment. Since the EIS is being prepared to provide information to the decision maker, the comments received during scoping have been reviewed for their applicability to the decision to be made. While some comments received were not applicable, they are also discussed in this summary. Comments and concerns expressed were associated with the effects of the transfer facility and related upland logging activity.

LOG TRANSFER FACILITY

Several issues were raised concerning potential positive and negative effects of the proposed facilities on marine resources and uses of the waters within Cube Cove. Construction of the rubble mound breakwater will directly cover benthic habitat and sessile or slow moving benthos. In addition it could alter circulation patterns and flushing rates within Cube

Cove. If these changes are significant, an accumulation of bark debris, toxic leachates and decomposition byproducts as well as hydrocarbons from accidental spills could occur behind the breakwater. Particularly, concern was expressed that this could adversely affect infauna, crabs, anadromous fishes, humpback whales and subsistence food resources.

Additionally, Cube Cove has been identified as providing protection from storms for recreation and fishing vessels and a fishing tender as well as being a point of access to areas of the Admiralty Island Monument. Some respondents indicated that the breakwater would offer protection to vessels and aircraft to wait out storms. The VHF repeater station Shee Atika proposes installing would also increase boater safety and communication along northern Chatham Strait. Other respondents stated that the breakwater, stifflegs, mooring buoys, anchor lines and temporarily moored log rafts would restrict access for refuge from storms and for subsistence and/or recreational opportunities in Cube Cove and Monument lands. Some also questioned whether the breakwater would provide sufficient protection for rafted logs from northwestern storms, resulting in loose or grounded logs.

Upland activities associated with the transfer facility include preparation of the log sort yard. Concerns expressed were the possible adverse impacts to the marine environment by run off of water and debris, and to eagles, deer, and bear from blasting and habitat modification. While the sort yard itself does not require a Department of Army permit, it is closely associated with the transfer facilities. All of these issues will be discussed in the EIS.

Logging and Camp Activities

Respondents indicated concern for the effects of clear-cut habitat modification on deer, bear, fish, eagles, small fur bearers, recreation, aesthetics and adjacent Monument lands. Concern was also expressed on the potential impacts of establishment of a community on north Admiralty, such as increased hunting and fishing pressure effects on Angoon's subsistence life style, the potential for development of nuisance bear problems, and increased access by logging roads to upland deer habitats.

Unemployment statistics of Sitka native residents and Angoon residents were submitted. Concern was expressed that reduction in government funding for jobs and assistance programs in conjunction with depressed fishing and logging industries would have a significant effect on their populations. Both communities are concerned about the effect decisions concerning this project may have on future generations. These issues will be discussed in the EIS.

AGENCY COORDINATION

In compliance with a stipulation signed by the Department of Justice and the Sierra Club Legal Defense Fund, the Army Corps of Engineers is preparing an EIS on the log transfer facility and has assumed the role of lead agency. The U.S. Forest Service and National Marine Fisheries Service are cooperating agencies. While the latter two agencies have no permitting authority they are providing technical expertise and advice to the Corps. Other agency coordination includes the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Alaska Division of Policy Development and Planning, the Alaska Department of Natural Resources, the Alaska Division of Forestry, the Alaska Department of Environmental Conservation, and the Alaska Department of Fish and Game, including the Divisions of Game, Commercial Fish, Sport Fish, and Subsistence. Local governments of Angoon, Hoonah, Juneau, Tenakee Springs and Sitka are on the mailing list and have been invited to submit comments.

ALTERNATIVES

Alternatives to be considered are "No Action" which for regulatory actions is to deny the permit, and reasonable alternative locations, and alternative designs for the transfer facility. Land trades and mangement of Shee Atika's lands as monument lands will not be considered in our discussion of alternatives although they will be discussed as issues raised during scoping. Congress conveyed these lands to Shee Atika as private lands. While we are aware that the conveyance is being contested in court, we are unaware of a ruling to change the status.

Other Issues

The Sierra Club Legal Defense Fund has made several additional suggestions for consideration in the EIS. These include the following: 1) Evaluation and coordination concerning wetlands. This is done as part of a Corps EIS. 2) Tiered EISs. Although tiering is an option available to agencies, a site specific EIS will be prepared for the log transfer facility. 3) Management actions under Section 22(k) of ANCSA. This provision expires on Shee Atika selections in December 1983. 4) Section 402 of the Clean Water Act. The U.S. Environmental Protection Agency is considering three NPDES permits for the proposed facilities. We will continue to coordinate with EPA on this issue. 5) Unique agriculture lands. We are unaware of any designations in southeastern Alaska but will coordinate with Department of Agriculture. 6) Section 810 of ANCSA. Subsistence studies required under Section 810 pertain to public lands, not private lands. 7) Worst case analysis for the effects on Angoon's subsistence life style. Impacts on Angoon's subsistence life style will be discussed in the EIS. A worst case analysis would be performed if sufficient information is not available to determine the effects of the proposed facility on subsistence resources.

PERMITS AND APPROVALS REQUIRED FOR SHEE ATIKA'S ADMIRALTY OPERATION

Federal

Department of Army (Section 404 of the Clean Water Act; Section 10 of the Rivers and Harbors Act of 1899)

Environmental Protection Agency (NPDES Permits)

Federal Communications Commission (Radio and Wire Communications Construction Permits and Lisences)

U.S. Coast Guard (Approval of Oil Spill Clean Up)

FEDERAL AVIATION ADMINSTRATION (Notice of Intent to Establish Airport Landing Area, Airport Operating Certificate)

State

Department of Natural Resources (Tidelands Permit; Water Use Permit Forest Practice Notification)

Alaska Department of Environmental Conservation (Certificate of Reasonable Assurance; Solid Waste Disposal Permit; Drinking Water Permit)

Alaska Department of Fish and Game (Anadromous Fish Protection Permit)

Senator MURKOWSKI. Max Peterson is our next witness. Max heads up the U.S. Forest Service.

Max, it is nice to have you before us.

STATEMENT OF R. MAX PETERSON, CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. PETERSON. Thank you very much, Mr. Chairman.

Maybe, in the interest of time, I could summarize my statement if you want to accept it for the record.

Senator MURKOWSKI. Please. Feel free. Your entire statement will be submitted in the record as if read.

Mr. PETERSON. Thank you very much, Mr. Chairman.

I might refer to the map just a moment to place the Shee Atika question in perspective. I will ask Walt Sheridan to point to these areas on the maps as I mention them.

After the passage of the Alaska Native Claims Settlement Act, after some false starts, the Natives did select these three areas. Shee Atika selected the area south of Angoon; and Kootznoowoo selected the area that is shown in red; and Goldbelt selected the area to the north.

Senator MURKOWSKI. When was that?

Mr. PETERSON. These selections were made in 1972, 1973, and 1974. I think they were actually made in 1973, and then there were subsequent changes in areas selected.

Senator MURKOWSKI. Could you, for the benefit of the record, indicate what areas were previously logged. That is historical data, I suppose, but I am curious.

Mr. PETERSON. I cannot locate them all on the map, but let me give you a general roundup.

Senator MURKOWSKI. All right.

Mr. PETERSON. Logging has occurred on Admiralty Island since about 1850. There were at least two locations of logging on the island in 1850. Then logging continued in 1860, 1880, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, throughout the 1920's and the 1930's, continuing in the 1950's and the 1960's, all the way up until 1971. So there has been logging on Admiralty Island for about 130 years.

I think sometimes when we talk about Admiralty Island that people are visualizing an island about a mile wide. Admiralty Island, as you know, is roughly 100 miles long, and is 10 to 15 miles wide and contains about 1 million acres. So it is a relatively huge area. Although this logging has taken place for 130 years, if you fly over Admiralty Island today, most of it is invisible because of the regrowth. In fact, some of the areas that people consider semialpine are actually second-growth areas. So there has been a lot of logging on Admiralty Island.

There was also a considerable amount of development for fishing. In fact, there were fish plants located on Admiralty Island.

Senator MURKOWSKI. Do you mean canneries and processing plants?

Mr. PETERSON. Canneries and processing plants.

So there has been a lot of activity on Admiralty Island during the last 100 years, in addition to the permanent native settlement of Angoon.

These three areas were selected by the natives. At the time, in the late 1970's, Congress was considering the Alaska lands legislation and there was interest in seeing if there were places off of Admiralty where the natives could find land.

This effort to find off-Admiralty lands resulted in the selection that is shown in red for Angoon, a little bit of land on Admiralty, and then a larger area down south.

Senator **Murkowski**. On Prince of Wales?

Mr. **Peterson**. Prince of Wales, yes.

And then we negotiated with Goldbelt and finally reached an exchange agreement with Goldbelt for selections on the mainland.

Senator **Murkowski**. What was the rationale of the selection process? Why move?

Mr. **Peterson**. The idea of moving was due to the great interest in Admiralty Island, in the resources on Admiralty Island, and frankly, threats of litigation if Goldbelt stayed on Admiralty Island.

Senator **Murkowski**. Who made those threats? Do you have any record in the Forest Service?

Mr. **Peterson**. Angoon, of course, objected to both Shee Atika's and Goldbelt's selections and they were joined by several environmental groups in opposing those selections. As Mr. Horn indicated earlier, there were challenges to those selections by other groups at the time the original selections were made. So one of the motivations for getting off Admiralty was to avoid that kind of controversy.

Senator **Murkowski**. Was this the same area that had been set aside as a pulp allotment, and U.S. Plywood/Champion bid on it?

Mr. **Peterson**. Yes. There was a long-term sale that was made in that area that at one time would have depended partially on Admiralty Island. That sale was actually made and was pending for a number of years and was finally cancelled by mutual agreement because of challenges to that sale. It was finally cancelled in the 1970's.

But the Forest Service did, as the record will show, enter into negotiations with all three of the native corporations to look at selections off of Admiralty Island. This was difficult because when you move to the mainland, there were two factors involved. There was substantial interest in the wilderness areas on the mainland as well as the long-term sales and other economic activity, which meant that there was very little land on the mainland that could be exchanged for land on the island without other disruption. In other words, there was and is no free lunch. You cannot provide something on the mainland without disrupting something else, either another wilderness area or other economic activity, including the long-term sales.

We did in fact carry out extensive exchange negotiations with Shee Atika between 1970 and 1980. I participated personally in some of those. But we were ultimately not successful because there were only scattered tracts on the mainland that were available, and they were nowhere near the quality of the land at Hood Bay on Admiralty Island in terms of the timber resources, in terms of the overall quality and the compactness of it.

We were not able to reach agreement for an alternative selection on the mainland. We were able, though, to reach agreement that it was not in their best interest to be at Hood Bay south of Angoon because the land was both close to the village of Angoon and was more environmentally sensitive.

So out of all of those negotiations—which included many Members of Congress and congressional staff—the decision was made by Congress to place Shee Atika in the area that was originally selected by Goldbelt. In other words, Goldbelt moved off Admiralty Island and Shee Atika moved to the areas that Goldbelt had originally selected.

This was approved by Congress, as has been already indicated, in the same act that created the monument. So the idea that this was somehow incompatible with the monument does not stand up because Congress did both in the same legislation. Congress created the monument and this specific location for the entitlement of the Natives.

Senator MURKOWSKI. Is the inference, then, that the two were interdependent, that if Congress had not addressed itself to the creation of the monument, the specific area set aside, the 23,000 acres for Shee Atika, would not have occurred either?

Mr. PETERSON. Well, Shee Atika, of course, could have stayed where it was. It could have stayed with the original selection at Hood Bay. Shee Atika agreed to move to the north part of the island in deference to Angoon's and other groups concerns and because it was a less environmentally sensitive area. To the Members of Congress and others that were working on this, it was the best compromise that anybody could come up with, because they just ran out of other options, and so Congress then endorsed this by the passage of the Alaska National Interest Lands Conservation Act.

I would end my testimony, Mr. Chairman, by saying that the Department of Agriculture supported the decision of Congress and Shee Atika to move from Hood Bay to Cube Cove in 1980. We offered to work with and otherwise advise Shee Atika, as we have in the past, to assure optimum utilization of the forest resources and protection of the associated fish, wildlife, soil, water, and recreation resources.

We believe that the compromise struck by Congress in the enactment of section 506 of ANILCA is fair and reasonable, considering all of the things that had to go into the equation.

The idea that there are somehow some other unallocated lands available on the mainland so somebody can wave a wand and come up with a solution that is perfect for everybody, is as far as we know, a fantasy. There is no such capability.

Senator MURKOWSKI. Is the entire land mass in Tongass National Forest under your stewardship?

Mr. PETERSON. Yes, sir. We do not see a better solution than the one there now. I am not saying we close our minds to any other opportunities, but at least, from what we can see, this is the best compromise that could be worked out by all those who worked on it.

I will end my testimony, Mr. Chairman, by saying that we would continue to work with the committee, with you and with your staff and with those who are interested, to see if there is any better solution, but we do not know of one at this point.

We certainly think that justice delayed is justice denied in this case. After 12 years of effort, to still not have title to the land seems like a miscarriage of justice.

[The prepared statement and additional material follows. Testimony resumes on p. 344.]

PREPARED STATEMENT OF
R. MAX PETERSON, CHIEF, FOREST SERVICE,
UNITED STATES DEPARTMENT OF AGRICULTURE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am pleased to have this opportunity to present the Department of Agriculture's views on the problems that have prevented Shee Atika, Incorporated from realizing the benefits from the lands conveyed to them by the Alaska Native Claims Settlement Act (ANCSA). The lands were conveyed in accordance with section 506 of the Alaska National Interest Lands Conservation Act (ANILCA). We support the Department of Interior position and defer to them in regards to the implementation of ANCSA. Our testimony pertains to the selection and management, by the native corporations, of their forest lands.

The ANCSA became law in December of 1971. Section 14(h)(3) directed that the Natives residing in Sitka, Kenai, Juneau and Kodiak receive the surface estate of not more than 23,040 acres of land within reasonable proximity to those municipalities. Department of Interior regulations of May 30, 1973, defined "reasonable proximity" as being land within 50 miles of each of these cities. Sitka, Juneau, and Angoon all formed corporations, required as a prerequisite to selecting their lands, and named them Shee Atika, Goldbelt, and Kootznoowoo respectively.

As prescribed by Department of Interior regulations, the nomination and selection process was followed. Shee Atika selected their acreage in Hood Bay near the village of Angoon and Goldbelt selected their acreage on the northwest shore of Admiralty Island some 30 miles north of Angoon near Cube Cove.

Both selections met with the disapproval of Kootznoowoo, environmentalist groups, and some individuals. Lawsuits were filed and proposed conveyances were delayed.

Efforts were initiated by the Forest Service, the two corporations, and others to locate comparable blocks of land elsewhere on the Tongass National Forest. There were limited mainland areas available for substitution that were not already committed to long term timber sales, or proposed for wilderness. However, an area on the mainland adjacent to Hobart Bay was identified as being reasonably comparable and Goldbelt elected to make a substitution.

The Federal Government carried on extensive exchange negotiations with Shee Atika between 1978 and 1980, but these were ultimately not successful. The failure to reach an agreement was due both to the scattered tracts available on the mainland for selection and the widely disparate views of the Government and Shee Atika as to the respective values of the timber at Hood Bay on Admiralty Island as compared to other sites on the mainland.

In their deliberations prior to passage of the Alaska National Interest Lands Conservation Act (ANILCA), Congress approved the Goldbelt exchange and also concluded that, lacking other viable alternatives, an Admiralty Island selection in the Cube Cove area was preferable to the Shee Atika Hood Bay selection. This eliminated a potential impact on the historically used Angoon area, Hood Bay, and allowed Shee Atika to develop a relatively isolated, high timber value area some 30 miles north of Angoon. Most of the parties involved, including Congress and the Executive Branch, concluded that this alternative would best meet the purpose and promise of the ANCSA insofar as Shee Atika was concerned and at the same time minimize the impact of development and timber harvesting of Native lands on the Admiralty Island National Monument. Also, in furtherance of this carefully crafted compromise, Congress, in Section 506 of ANILCA, established the present land ownership pattern on Admiralty Island including the conveyance of some 21,811 acres to Shee Atika, Incorporated in the Cube Cove area.

Title III, Section 315 of the 1983 Appropriations Act for Interior and Related Agencies reaffirmed Congress intent that Shee Atika should have the unencumbered right of ownership and development of its lands on Admiralty Island.

Following passage of ANILCA, the 21,811 acre tract of land near Cube Cove was conveyed, in fee, to Shee Atika. After cutting some 175 acres near the cove, filings in both State and Federal courts led to court ordered cessation of all activities. The cut timber lies in place today.

The Department of Agriculture supported the decision of Congress and Shee Atika to move to Cube Cove in 1980. The Forest Service offers to work with and otherwise advise Shee Atika as it has in the past to assure optimum utilization of their forest resources and adequate protection of associated fish, wildlife, soil and water, and recreation resources.

We believe the compromise struck by Congress in the enactment of section 506 is fair and reasonable. Furthermore, it should be recognized that this provision was but one part of the overall land allocation in southeast Alaska that included a number of adjustments in other Native Corporation land holdings, established 5.3 million acres of Wilderness and mandated a timber level of 4.5 billion board feet per decade from the Tongass National Forest. There are no unallocated lands available. The Shee Atika situation does not require some new solution. It does require implementing the solution passed into law in 1980 so that Shee Atika will be able to utilize the resources of the land to which it is entitled.

We appreciate this opportunity to testify before this group and hope that through this forum, resolution to the issues affecting Shee Atika's Cube Cove lands may be reached.

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United States Department of Agriculture
Forest Service
Washington Office
12th & Independence SW
P.O. Box 2417
Washington, DC 20013

Reply to: 1510

Date DEC 1 1983

RECE[illegible] 0 1 1983

Honorable Mark Andrews
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed with our editorial suggestions is the transcript of testimony by R. Max Peterson, Chief of the Forest Service, on Oversight of Shee Atika, Inc., before the Senate Select Committee on Indian Affairs on November 2, 1983.

At the request of Senator Murkowski, we consulted with the Forest Service Environmental Research section to determine what research has been done on possible pollution from transporting logs in water bodies. The Forest Service has not conducted any research studies in this area. We are conducting a computer search to determine if other agencies or institutions have conducted any research in this area. We will provide you the results of this search.

Sincerely,

R. MAX PETERSON
for Chief

Enclosure

United States Department of Agriculture
Forest Service
Washington Office
12th & Independence SW
P.O. Box 2417
Washington, DC 20013

Reply to: 1510

Date: [illegible]

2A

REC[illegible]

Honorable Mark Andrews
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As requested by Senator Murkowski during the Oversight Hearing on Shee Atika, Inc., November 2, 1983, enclosed are materials documenting several studies that have been conducted to evaluate the effects of log handling and storage on water quality. The studies indicate that, in general, there are minimal effects on water quality from temporary storage of log rafts and the transporting of logs by rafting in waters subject to a large flow of fairly good quality water. In many instances, the changes in pollution indicies were too small to be verified by field measurement.

Sincerely,

f J. Lamar Beasley
R. MAX PETERSON
Chief

Enclosures

FS-6200-11 (8-80)

EPA-R2-73-085
February 1973

THE INFLUENCE OF LOG HANDLING ON WATER QUALITY

By

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Project 12100 EBG

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Prepared for

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WASHINGTON, D.C. 20460

ABSTRACT

The water storage of logs is widely practiced in the Pacific Northwest. An investigation has been made to determine the effect of this practice on water quality.

Soluble organic matter and some inorganics leach from logs floating in water and from logs held in sprinkled land decks. The character and quantity of leachate from Douglas fir, ponderosa pine and hemlock logs have been examined. Measurements including BOD, COD, PBI, solids and toxicity have shown that in most situations the contribution of soluble leachates to holding water is not a significant water pollution problem.

The most significant problem associated with water storage appears to be the loss of bark from logs during dumping, raft transport and raft storage. Dislodged bark can float until it becomes water logged and sinks forming benthic deposits. Floating bark is aesthetically displeasing and could interfere with other beneficial uses of a lake, stream or estuary. Benthic deposits exert a small, but measurable oxygen demand and may influence the biology of the benthic zone. Implementation of corrective measures by the timber industry to reduce bark losses could make the water storage of logs a practice which is compatible with a high quality environment.

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CONCLUSIONS

The following conclusions are based upon the results of a three year research investigation outlined in this report.

1. Water storage of logs is widely practiced in Oregon, Washington and Alaska.
2. Leachates from logs held in water storage contribute organic substances which exert a BOD and COD. In most situations the quantity of these substances which enter the holding water do not represent a significant water quality problem.
3. Log leachates exert some acute toxicity to fish.
4. Color-producing substances measured by the PBI are found in log leachates, and are derived primarily from bark.
5. Bark is dislodged from logs in significant quantities during dumping and raft transport activities. Considerably more bark is dislodged from Douglas fir logs than from ponderosa pine logs.
6. Log dumping methods significantly influence the amount of bark which is dislodged from logs.
7. Dislodged bark sinks at a rate dependent upon particle size and species of tree.
8. Bark deposits exert a small, but measurable, demand for oxygen from overlying waters.
9. Should the loss of bark to holding water be minimized by improved handling practices by the timber industry, the water storage of logs would not constitute a major water quality problem.

RECOMMENDATIONS

1. Further study should be undertaken to determine the effect of bark deposits on the biology of the benthic zone and to evaluate the effect on water quality created by the dredging of bark deposits.

2. The timber industry should strive to improve methods of depositing logs into water storage areas. Methods for consideration might include: (a) debarking logs on land before dumping, (b) installation of a sling hoist or fork lift to convey logs from trucks to holding water or (c) utilization of a man-made dumping channel or pond adjacent to storage areas which would retain floating and sunken bark.

✓ 3. The water storage of logs, with provisions for minimizing bark losses, should not be discouraged unless a suitable alternate storage method is available which results in less input to the environment.

✓ Deschutes River Storage

The second log storage area studied was on the Deschutes River near Bend, Oregon. Approximately 2.5 million board feet of ponderosa pine logs were stored in the river in the area under study. Most of the bark remained intact on the logs. River flow was measured to be 1,360 cfs during the study period.

Water samples were collected immediately upstream and downstream from the storage area at six to eight hour intervals for three days. Samples were analyzed for BOD, COD, PBI and TOC. Average results from eight samples at each site are shown in Table 17. The predicted contribution of pollutants is also given in Table 17. Refer to Appendix D for computation of predicted leachate values.

These results clearly show that the quantity of pollutants picked up by log storage was not detectable within the limits of test accuracy and sample variability. The average BOD values for influent and effluent samples were exactly the same. Again, when trace concentrations are multiplied by very large flows, a considerable number of pounds are calculated. Therefore, it appears more reasonable to determine the quantity and species of logs in water storage, then predict the effect on the holding water, rather than rely upon direct water quality measurements.

✓ Coos Bay Study

The final log storage sites selected were on the north and south forks of the Coos River in western Oregon. Douglas fir and hemlock logs with bark intact (except for that lost during dumping and raft transport) were held in rafts for one or more days. The rafts were then taken by tug to the lower bay for processing. The log storage areas were in the upper tidal water, very near to the free flowing streams. Therefore, the log

Table 17. BOD, COD, PBI and TOC in Inflow and Outflow from the Log Storage Area on the Deschutes River

Pollution index	Inflow concentration mg/l	Outflow concentration mg/l	Measured increase		Predicted increase	
			mg/l	lb/day[2]	mg/l	lb/day
BOD	1.9± 0.5	1.9± 0.5	0	0	<0.01	50
COD	6.0± 1.6	6.5± 1.6	0.5	70	<0.01	110
PBI[1]	2.2± 2.17	3.9± 0.99	1.7	220	<0.01	40
TOC	0.1± 0.15	1.1± 1.4	1.0	130	<0.02	360

[1] PBI is expressed as ppm SSL (10% by weight)

[2] lb/day is based on a flow of 1360 cfs (880 mdg)

holding water moved both up- and downstream during each tidal cycle, with some net movement downstream due to stream inflow. This tidal fluctuation, combined with the large volume of fresh water inflow, greatly complicated the direct measurement of differences in water quality upstream and downstream from the rafted logs.

Predicted values for the logs stored in the North Fork area are given in Table 18 and those for the South Fork are given in Table 19. Supporting calculations are included in Appendix D.

Results shown in these tables reveal that less than 1.0 mg/l of all pollution indices measured were added to the log handling water. Since this quantity is too small to verify by field measurement, especially in a situation in which the stream and tidal hydraulics are complicated, only limited effort was made to determine the "actual" impairment to water quality from the log rafts. The direct measurements that were made proved to be widely variable, and in some instances showed a decrease in pollutant level during water passage through the log storage area.

Benthic oxygen demand determinations were made at several points in and around the log storage areas. Values of 1.7 to 3.8 g O_2/m^2/day were determined for the south fork storage area, whereas values ranged from 1.9 to 4.4 g O_2/m^2/day for the north fork storage site. A summary of oxygen uptake values is given in Table 12. Assuming an average demand of 3.0 g O_2/m^2/day and a log storage area of 200 meters by 20 meters (4,000 m^2), the total demand for oxygen would be 12,000 grams or 26.5 lbs per day. With a stream flow of 20 mgd, the resulting depletion of dissolved oxygen from the overlying water would be only 0.16 mg/l. This deficit could not be determined by conventional analytical methods used in the field.

Part IV: Magnitude of the Problem

One of the specific aims of this research program was to survey the magnitude of the pollution problem in the Pacific Northwest resulting from log handling and storage. Such a survey requires the active participation of saw mills, pulp mills, and other industries which utilize raw timber. Several attempts were made to organize this survey through various timber industry associations, without success. The industry was found to be reluctant to divulge information regarding log inventories, length of storage and conditions for storage. Perhaps as state and federal pollution control authorities press for tighter control of all pollution discharges, information of this type will become more readily obtainable. Some semiquantitive information was obtained, however, during visits to the states in the Northwest region which have log storage problems.

Oregon

Several species of timber including Douglas fir, ponderosa pine, white pine, hemlock and cedar are harvested in Oregon. Nearly one-half of the 5000 manufacturing firms in the state depend upon this timber resource (19). Furthermore, the 400 billion board feet of raw timber produced in Oregon ranks as the largest single state output in the nation.

Large inventories of logs are held in lakes, rivers, estuaries, and manmade ponds. Oregon has over 12,000 acres of log ponds and 2,000 acres of sloughs and canals used for log storage (18). In some areas of the state the Department of Environmental Quality has required that all logs be peeled before storage in a water course. Land storage of logs, with and without sprinkling, is also widely practiced.

Washington

Vast quantities of logs are stored in rivers, lakes, estuaries, and manmade log ponds in the state of Washington. Land storage of logs is also widely practiced. No estimate was obtainable regarding the quantity and species of logs stored.

California

California officials in Sacramento indicate that little, if any, water storage is permitted in the northern California timber regions. Most all logs are held in cold decks on land.

Alaska

There are only two major log storage sites in Alaska at the present time. These are located near Sitka and Ketchikan. Logs are primarily held in saline water bays and estuaries. The logs are strapped into bundles, then the bundles are rafted for transport and storage. No attempt was made in this investigation to study the effect of bundling on the loss of bark, however, this procedure should reduce bark losses. Furthermore, it is likely the rate of leaching and benthic oxygen uptake rate would be reduced in the very cold Alaskan waters.

Since the quantity of substances leaching from logs in water storage is, in general, minute when diluted with the large hydraulic flows found in many water courses used for storage, it is virtually impossible to detect an increase in pollutant level due to the logs. The recommended procedure for evaluating the impact of log storage on water quality is to apply the predictive equations developed in this study. Several unsuccessful attempts were made in the field to directly measure an increase in pollutatnt load resulting from water storage of logs. This is not to infer that log storage does not add pollutants to the holding water, but only that the input from leaching is generally small. Dislodged bark is another matter. Methods for controlling bark losses must be developed and implemented, such as improved methods of depositing logs into the holding water. Debarking of logs prior to water storage has been successfully used at several locations in Oregon and could possibly be applied in other situations. Banding logs in bundles may be another effective method for reducing bark losses.

Based upon the information generated in this three-year investigation, it appears that the widely practiced water storage of logs does not have a severe impact on water quality in the Pacific Northwest. Improved methods of handling logs during dumping, rafting and transport could significantly reduce bark losses and thereby prevent the build up of benthic deposits. Research is currently being conducted by this investigator to evaluate the effects of bark deposits on aquatic organisms.

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EFFECTS OF LOG HANDLING AND STORAGE ON WATER QUALITY

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SECTION I
CONCLUSIONS

1. Dissolved oxygen in flow-through log ponds tends to become depleted during summer months when flows are low and the waters are warm.

2. Both biological and chemical aspects of water quality can be adversely affected by flow-through log ponds.

3. The discharge from flow-through log ponds is esthetically displeasing, due mainly to the dark color of the water. This dark color persists downstream until it is diluted out.

4. The runoff from wet decks has pollutional characteristics equal to or greater than that of waters from flow-through log ponds.

5. While wet deck runoff has the potential to degrade water quality in a receiving stream, especially under low flow conditions, this effect could not be directly demonstrated.

6. The effects of handling and rafting logs on water quality in rivers and sloughs depends on the intensity of such activity and the stream's flushing action. A signficant problem associated with water storage is the loss of bark during log dumping. Degradation will tend to be greater when larger amounts of logs are handled and rafted. Flushing action of the stream may reduce degradation, or even transfer the problem to another area.

STEAMBOAT SLOUGH STUDY SITE

Steamboat Slough study site is on the north side of the Columbia River about four miles downstream from Cathlamet, Washington. The slough, approximately 3.2 km long and 90-122 m wide along most of its length, has a fairly good flow of water. Both ends of the slough open into a main channel of the Columbia River. The study site is used for intermittent temporary storage of log rafts. These rafts may be either spill-over from a nearby log handling operation or in transit on the Columbia River. No data were readily available on the amount of recent storage in the area.

Nine stations were sampled in February and July, 1969 (Fig. 5). No rafts were in the slough at the time of sampling in February and only a few were present in July. The bottom materials were examined at three extra locations in July.

Sand and silty-sand with varying small amounts of bark and detritus comprised the bottom materials in February and July

Station No.	Station Description
SB-1	Steamboat Slough near north bank about 152 meters below upstream end.
SB-2	Steamboat Slough in mid-channel opposite station SB-1.
SB-3	Steamboat Slough near south bank opposite station SB-1.
SB-4	Steamboat Slough near north bank about 1036 meters below upstream end.
SB-5	Steamboat Slough in mid-channel opposite station SB-4.
SB-6	Steamboat Slough near south bank opposite station SB-4.
SB-7	Steamboat Slough near north bank about 457 meters above downstream end.
SB-8	Steamboat Slough in mid-channel opposite station SB-7.
SB-9	Steamboat Slough near south bank opposite station SB-7.

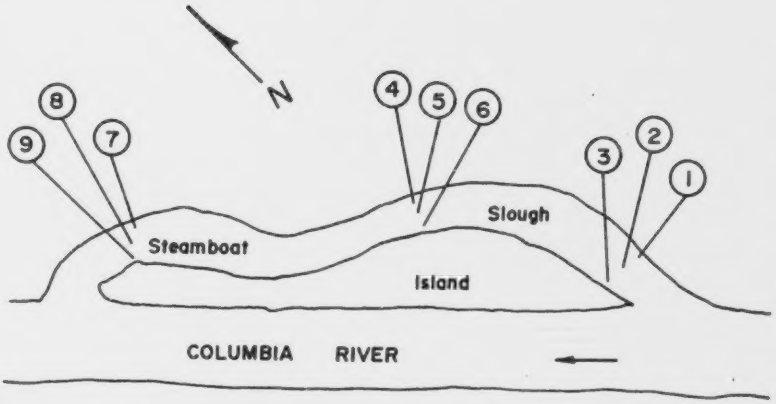


Figure 5. Steamboat Slough study site

Table 10. STEAMBOAT SLOUGH STUDY SITE BOTTOM DWELLING ORGANISMS

Station[a]	No. Genera	No./m^2	Depth (m)	Bottom Type	Volume per sample, cc	
					Bark	Detritus
February 12, 1969						
SB-1	7	7,619	3	Silty-sand, detritus	0	30
SB-2	7	3,811	7.6	Silty-sand, detritus	0	15
SB-3	6	3,434	5.8	Silty-sand, detritus, bark	8	25
SB-4[b]	-	-	7.6	Hard	-	-
SB-5	3	786	7.6	Coarse sand, detritus, bark	10	10
SB-6	5	7,737	7.6	Silty-sand, detritus	0	25
SB-7	9	8,837	7.6	Sand, detritus, bark	5	20
SB-8	5	937	4	Sand, detritus, bark	5	2
SB-9	5	2,412	2.7	Sand, detritus	0	4
July 15, 1969						
SB-1	10	7,081	6.1	Silty sand, detritus, bark	13	20
SB-2	6	303	4.6	Silty-sand	0	0
SB-3	9	4,251	3.7	Silty-sand, detritus, bark	6	251
SB-4	7	1,398	6.7	Silty-sand, detritus	0	7
SB-5	5	227	7	Silty-sand	0	0
SB-6	4	1,357	6.7	Silty-sand, detritus, bark	5	10
SB-7	6	980	7.6	Silty-sand, detritu, bark	6	1
SB-8	6	270	4.6	Silty sand	0	0
SB-9	4	2,399	.9	Silty-sand, detritus, bark	2	8

---

[a] One sample per station

[b] No sample.

(Table 10). Bottom samples in February contained 5-10 cc of bark and 2-3 cc of detritus. The bark ranged from 0.7-20 mm wide, to 1.4-140 mm long. No sample could be obtained at SB-4. Similar amounts of bark and detrital material were obtained in July at the majority of stations. Bark ranged from 2-13 cc and detritus from 1-20 cc per grab sample. A large amount of detritus, 251 cc, occurred at SB-3. The bark ranged from 3-65 mm wide, to 6-120 mm long.

Log rafts were moored at SB-5 and SB-6 in July. The bottom materials examined at three additional locations in this area did not differ from the materials at the regular stations. During both seasons there was less bark and detrital material at mid-channel than near the sides of the slough, a probable response to scouring by the current. The water action plus the limited log rafting are the most likely causes of the small amount of bark deposited throughout the slough.

Bottom depths ranged from 2.7-7.6 m in February and from 0.9-7 m in July (Table 10). The water was slightly murky at both seasons; transparency, as measured with a Secchi disc, increased from 0.76 m in February to 1.2 m in July

The chemical water quality did not appear to have adversely influenced the distribution of the bottom dwelling populations (Table 11). Dissolved oxygen was high at both seasons and averaged over 10 mg/l in February and over 13 mg/l in July. PBI was very uniform in February, ranging from 4.8-5.5 mg/l. COD ranged from 9-10 mg/l in July. Relatively higher values of COD, color, turbidity and SS at SB-6 may have been caused by a localized disturbance of the bottom materials.

The predominant bottom-dwelling animals of Steamboat Slough were sludgeworms, marine scuds, midge larvae and asiatic clams. The number of different genera per station ranged from three to nine in February and from four to ten in July. There was no relationship between the number of genera and the bottom type (Table 10, App. E).

In February, the total number of organisms per station averaged 4,447/m² and ranged from 786-8,857/m². Populations decreased in July; the average number per station was 2,030/m² with a range of 227-7,081/m². More organisms were collected near the sides than mid-channel. This was probably a response to increased current and lesser amounts of bark and detritus in the mid-stream portion of the slough. The outer stations averaged 6,008 organisms/m²

Table 11. STEAMBOAT SLOUGH STUDY SITE WATER CHEMISTRY DATE

Sta. No.	Sample Depth (m)	Temp. °C	DO (mg/1)	pH	Cond. µmho	SS (mg/1)	VSS (mg/1)	Color Pt. Co.	Turb. Jksn	PBI (mg/1)	COD (mg/1)	BOD (mg/1)	Ortho P (mg/1)	TKN (mg/1)	NO_3-N (mg/1)
February 12, 1969															
Sb-1	3	2.5	13.8	6.7	118	21	12	20	12	4.8	8		.016	0.7	0.33
SB-2	6.4	2.5	14.2								11				
SB-3	5.8	2.5	14.3	6.7	121	24	5	15	13	5.3	4		.027	0.3	0.42
SB-4	6.4	3.5	13.8	6.4	120	9	2	30	10	5.1	8		.036	0.3	0.42
SB-5	6.4	3.5	13.3								11				
SB-6	6.4	3.5	13.6	6.6	117	105	9	40	23	5	36		.016	0.7	0.33
SB-7	6.4	3.5	13.6	6.9	118	10	2	25	11	5.1	8		.03	0.4	0.44
SB-8	3.7	3.5	13.6								10				
SB-9	2.7	3.5	13.3	6.7	120	34	3	25	13	5.5	13		.025	0.2	0.4
July 15, 1969															
SB-1	6.1	19.0	10.5								10				
SB-3	3.7	18.5	10.8								-				
SB-4	6.7	18.5	10.4	7.4	138	20	3	5	5	3	10	2	.01	0.3	0.05
SB-6	6.7	18.5	10.4	7.4	138	26	3	15	6	3	10	2	.01	0.3	0.06
SB-7	7.6	18.5	-	7.2							9				
SB-9	.9	18.5	-	7.5							9				

Note: DO concentrations at the surface were within 1.0 mg/1 of the concentrations observed near the bottom at each station.

and mid-channel stations 1,845/m² in February. The average values for July were 2,911/m² at the outer stations and only 267/m² at the mid-channel stations (Table 10).

Either scuds or sludgeworms were predominant at every station during both seasons with but two exceptions. In July, midge larvae comprised 75 percent of the population at SB-2 and asiatic clams comprised 40 percent at SB-8. No detritus or bark were present at these two mid-channel stations at this time. Scuds comprised 37 to 84 percent of the bottom dwelling animals where they were the predominant forms; sludgeworms made up 43 to 95 percent at stations where they were predominant. There was no relationship between these latter two animals and the varying amounts of either bark or detritus (Table 10, App. E).

The bottom-dwelling animals of Steamboat Slough were not adversely afffected by the small amount of bark deposition. While there were smaller numbers of organisms at stations with less bark and detritus, there was no correlation between the amount of these materials and the type of predominant organisms with the exception of only two instances in July.

The results from this study site indicate that minimal effects upon the bottom-dwelling animals could probably be expected from temporary storage of log rafts in an area subjected to a large flow of fairly good quality water.

ELOCHOMAN AND CATHLAMET SLOUGHS STUDY SITE

Elochoman and Cathlamet Sloughs study site is on the north side of the Columbia River just downstream from Cathlamet, Washington. It includes Cathlamet Slough and a portion of Elochoman Slough (Fig. 6). Log handling and storage activities take place in Cathlamet Slough and on adjacent land on the north shore. Logs brought in by raft and truck are graded, sorted, stored in wet decks, and ultimately transported elsewhere, primarily by log raft, for use or resale. Approximately 260,000 m³ are handled annually. In 1968 hemlock comprised about 72 percent of the total, with the remainder consisting of spruce, cedar, alder, fir and silver fir.

A crane is used to remove and place logs in the water; they are lowered rather than being dumped. Most logs are banded into bundles by steel bands primarily to give greater capacity to the rafts, but also to prevent sinking and breakage. Accumulated

NOTE: Not to scale.

Some log rafting near
S. bank of Cathlamet Slough.

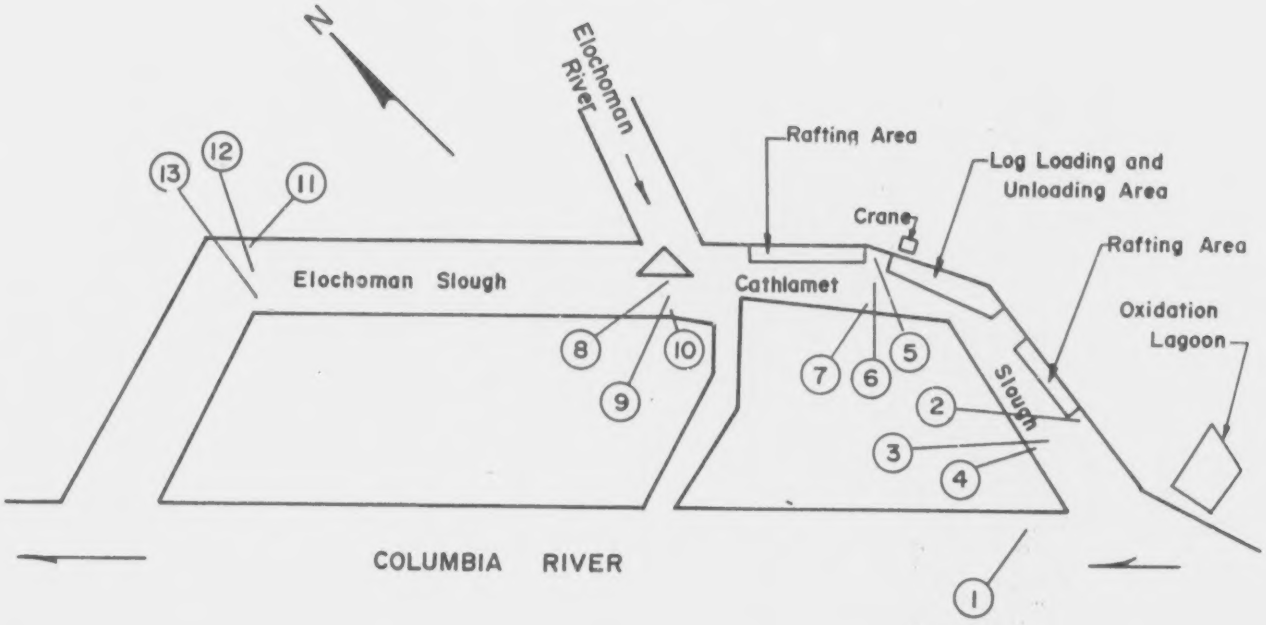

N
Elochoman River
Rafting Area
Log Loading and Unloading Area
Crane
Rafting Area
Oxidation Lagoon
Elochoman Slough
Cathlamet
Slough
COLUMBIA RIVER
1
2
3
4
5
6
7
8
9
10
11
12
13

Figure 6. Elochoman and Cathlamet Sloughs study site

bark is dredged from the log loading areas approximately every 2-3 months. The bark was removed in May prior to sampling in July, 1969. About every 4-5 years Cathlamet Slough is dredged down to sand where needed. It was last dredged prior to this study during the winter of 1967-68. Elochoman Slough is limited to temporary storage of log rafts.

Elochoman Slough and Cathlamet Slough are each about 2.4 km long and 60-120 m wide. Water depths are influenced somewhat by tidal fluctuations in addition to seasonal variations in the river level. Salt water does not intrude this far upstream. Although current velocities were not measured in the sloughs, they appear to be considerably less than in the main channels of the Columbia River.

Twelve stations were sampled in Elochoman and Cathlamet Sloughs in February, 1969 (Fig. 6, Table 12). These same stations, with the exception of EC-8, EC-9 and EC-10, were also sampled in July. EC-1 was established in the Columbia River near the entrance to Cathlamet Slough in July. The bottom materials were examined at four extra locations in July in addition to the regular stations.

Combinations of sand and silt with varying amounts of bark and detritus comprised the bottom materials of the study site (Table 13). Bottom samples collected in February contained from 0-110 cc of bark and from 7-320 cc of detritus. The bark ranged in size from 0.7-60 mm wide, to 1.4-125 mm long. No quantitative samples could be obtained at EC-7 and EC-13. In July, the samples contained from 15--190 cc of bark and from 15-210 cc of detritus. The bark ranged in size from 4-50 mm wide, to 6-300 mm long. There were no large bark deposits within the study area. The bottom materials from four additional locations in Cathlamet Slough did not differ from the materials at the regular stations.

Bottom samples were collected from depths of 0.9 - 4.6 m in February and from 2.7 - 4.9 m in July (Table 13). The water was slightly murky at both seasons; transparency, as measured with a Secchi disc, increased from 0.76 m in February to 1.37 m in July. Floating bark chunks were frequently observed in July.

Dissolved oxygen was high at both sampling seasons, ranging from 9.8-13.8 mg/l. There was little difference in levels of chemical constituents throughout the study site at each season. In July, the values were essentially the same in the slough as in the Columbia River at EC-1 (Table 14).

Table 12. SAMPLING STATIONS ELOCHOMAN AND CATHLAMET SLOUGHS STUDY SITE

Station No.	Station Description
EC-1	Columbia River about 152 m downstream from the upstream tip of the island and about 23 m from bank of island.
EC-2	Cathlamet Slough about 152 m downstream from the tip of the island. Near N. bank and just upstream of log rafting area.
EC-3	Cathlamet Slough near mid-channel and opposite station EC-2.
EC-4	Cathlamet Slough near S. bank and opposite station EC-2.
EC-5	Cathlamet Slough near N. Bank and immediately downstream from log loading and unloading area.
EC-6	Cathlamet Slough near mid-channel and opposite station EC-5.
EC-7	Cathlamet Slough near S. bank and opposite station EC-5.
EC-8	Near S. bank of small island at confluence of Elochoman River, Elochoman Slougn, and Cathlamet Slough.
EC-9	Near mid-channel opposite station EC-10.
EC-10	Near S. bank of channel opposite station EC-10.
EC-11	Elochoman Slough near N. bank about 914m upstream from mouth of slough.
EC-12	Elochoman Slough near mid-channel and opposite station EC-11.
EC-13	Elochoman Slough near S. bank and opposite station EC-11.

Table 13. ELOCHOMAN AND CATHLAMET SLOUGHS STUDY SITE BOTTOM DWELLING ORGANISMS

Station a/	No. Genera	No./m^2	Depth m	Bottom Type	Volume per sample, cc	
					Bark	Detritus
February 11, 1969						
EC-2	5	10,212	3	Silt, detritus, bark	110	7
EC-3	3	6,349	4.6	Sandy-silt, detritus, bark	21	12
EC-4	7	13,311	3.7	Sandy-silt, detritus, bark	7	100
EC-5	12	28,472	3.4	Silt, detritus, bark	80	320
EC-6	4	1,669	4.3	Silty-sand, detritus, bark	70	50
EC-7 b/	-	-	3	Sandy-silt, detritus, bark	-	-
EC-8	10	16,098	.9	Sandy-silt, detritus, wood	0	95
EC-9	11	13,452	1.5	Silty-sand, detritus, wood	0	60
EC-10	5	281	4.3	Sand, detritus, bark	3	3
EC-11	10	13,914	2.1	Silty-sand, detritus, bark	20	45
EC-12	8	2,714	3.1	Silty-sand, detritus, bark	20	45
EC-13 b/	-	-	2.4	Sand, detritus, bark	-	-
July 14, 1969						
EC-1 1/	5	722	5.2	Silty-sand, detritus, bark	15	80
EC-2	9	11,030	4.6	Silty-sand, detritus, bark	30	70
EC-3	4	10,219	4.6	Silty-sand, detritus, bark	15	55
EC-4	6	6,834	2.7	Silty-sand, detritus, bark	95	80
EC-5	4	13,636	4.9	Silty-sand, detritus, bark	70	150
EC-6	8	20,025	4.9	Silty-sand, detritus, bark	40	210
EC-7	8	5,210	4.6	Silty-sand, detritus, bark	190	70
EC-11	11	4,241	3	Silty-sand, detritus, bark	150	65
EC-12	6	1,043	3	Silty-sand, detritus, bark	25	15
EC-13	7	2,669	3	Silty-sand, detritus, bark	110	19

---

a/ One sample per station.

b/ No sample.

c/ Columbia River.

Table 14. ELOCHOMAN & CATHLAMET SLOUGHS STUDY SITE WATER CHEMISTRY DATA

Sta. No.	Sample Depth (m)	Temp. °C	DO (mg/l)	pH	Cond. µmho	SS (mg/l)	VSS (mg/l)	Color Pt. Co.	Turb. Jksn	PBI (mg/l)	COD (mg/l)	BOD (mg/l)	Ortho P (mg/l)	TKN (mg/l)	NO_3-N (mg/l)
February 11-12, 1969															
EC-3	4.6	3.0	12.4	6.7	124	10	4	25	8	4.2	4		.026	0.3	0.43
EC-6	4.3	3.0	13.4	6.8	126	20	5	25	10	3.9	<1		.028	0.3	0.42
EC-9	1.2	5.0	11.6	6.5	43	50	9	50	22	3.2	<5		.011	0.3	0.45
EC-12	3	3.0	13.8	6.5	108	18	5	30	10	4.4	5		.022	0.3	
July 14, 1969															
EC-1	5.2	19.0	9.8	7.4	130	8	1	15	6	2	5	1			
EC-1	Sample collected on July 15												.011	0.5	0.05
EC-3	4.6	18.5	10.1	6.5	131	20	3	15	7	2	13	2	.011	0.4	0.11
EC-6	4.9	18.5	9.8	7.0	130	21	<1	20	7	2	15	1			
EC-12	2.7	19.0	9.8	7.4	130	10	1	10	10	3		2			
EC-12	Sample collected July 15														

Note: DO concentrations at the surface were within 1 mg/l of DO concentrations near the bottom for each station.

The predominant bottom-dwelling organisms of Cathlamet and Elochoman Sloughs were sludgeworms, marine scuds, asiatic clams, and midge larvae. The average number of organisms per square meter was 10,647 in February and 8,323 in July (Table 13, App. F).

The bottom populations indicated degradation at stations EC-2 to EC-7 and better conditions at stations EC-8 to EC-13. No rafts were present at the time of sampling at stations EC-2 to EC-4. Log loading and unloading and raft construction and storage were concentrated in the area near stations EC-5 to EC-7. The areas near stations EC-8 to EC-13 were not used for rafting.

Sludgeworms, often common inhabitants of areas subjected to organic enrichment or pollution, comprised 96 to 98 percent of the organisms at the stations in Cathlamet Slough in February and from 94 to 98 percent in July. Improved conditions at stations EC-8 to EC-10, sampled only in February, were indicated by populations comprised of 54 to 70 percent sludgeworms, 19 to 20 percent scuds and 7 to 14 percent midge larvae (Table 13, App. F).

The biologically degraded section of the study site had fewer kinds of organisms, higher populations, and more bark and detritus than the lower reaches. In February a comparison of the average values between the five degraded upstream stations and the five improved downstream stations showed that the genera increased from six to nine per station, and the number of organisms decreased from 12,040 - 9,286 per m². The volume of bark decreased from 58 - 0.6 cc per sample, and the volume of detritus decreased from 98 to 56 cc per sample.

The smaller amounts of detritus and generally smaller amounts of bark in the biologically improved downstream area strongly suggests that the log handling activities in the upper reaches have had an adverse effect upon the bottom-dwelling animals. It seems likely that the larger amounts of detrital material in the upstream reaches were contributed to in large part by the unloading, loading, and rafting activities. Decomposition of the bottom materials at the upper stations probably produced a habitat more conducive to the establishment of animal populations tolerant to organically enriched conditions.

A municipal sewage lagoon in the town of Cathlamet just upstream from the entrance of Cathlamet Slough may have partially contributed to the degraded conditions of the upper portion of the study area. It was unlikely that the intermittent discharge from the lagoon would always flow into the slough but the possibility of some organic pollution from this source does exist. The results of this study suggest that log rafting activities in a comparatively sluggish slough can adversely affect the populations of bottom-dwelling animals.

COAL CREEK SLOUGH STUDY SITE

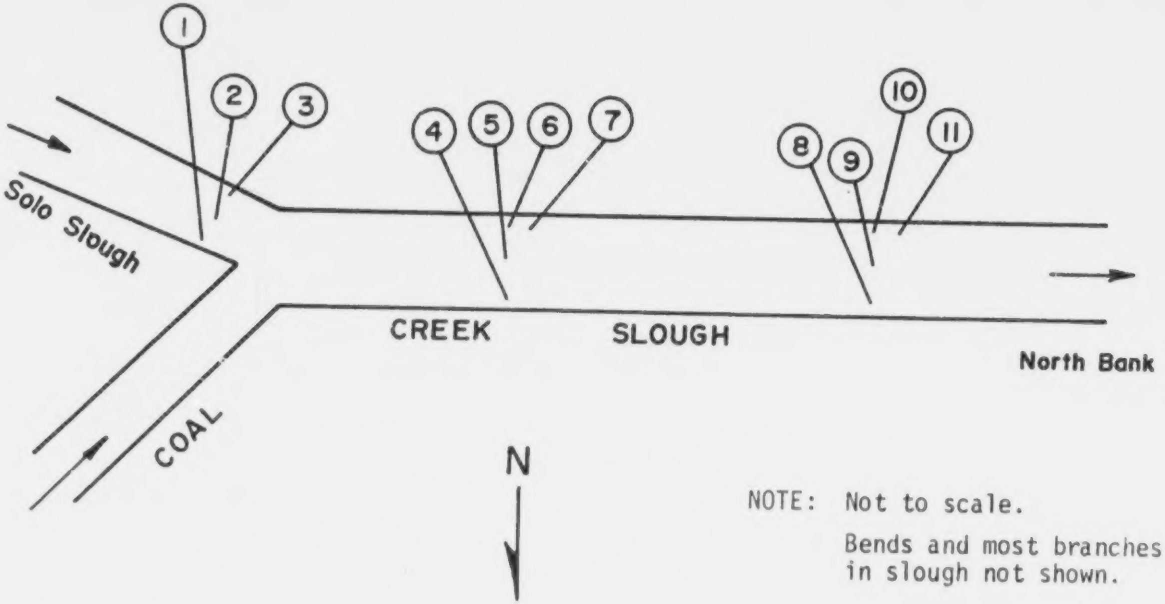
Coal Creek Slough study site is on the north edge of the Columbia River downstream from Longview, Washington. It includes most of Coal Creek Slough, which is used for log storage, and a small portion of Solo Slough. Log rafts extended along most of the length of the former slough during sampling in July, 1969; there were some wet decks in this area also. Approximately 190,000-212,000 m^3 of logs in rafts pass through the slough annually. Average storage time is about four months for the rafts and about one year in the wet decks. Douglas-fir make up about 60 percent of the logs with western red cedar the remainder.

Coal Creek Slough is about 9 km long and 30-122 m wide. Coal Creek flows into the slough near its upper end. There are two pumping stations that pump from adjacent low-lying lands into the slough. One of the stations is located at the upstream end of the slough and the other about one-third of the distance upstream from the slough's mouth. The pumps work intermittently; on the day samples were collected they were not operating. Water in the ditches leading to the downstream pump station was highly turbid. Cattle pastures are located adjacent to some of the drainage ditches.

Nine sampling stations were established at this site (Fig. 7, Table 15). Six were located in Coal Creek Slough in heavily rafted areas; three were located upstream in Solo Slough, a non-rafted area. The bottom materials were examined briefly at six additional locations.

Virtually stagnant water, low levels of dissolved oxygen and bottom-dwelling animals tolerant of enriched or polluted conditions were common throughout the study site. Extensive bark deposits characterized Coal Creek Slough and were absent from Solo Slough.

The bottom of Solo Slough was silty and contained from 60 - 120 cc of detritus per sample. Silt, organic ooze, detritus and bark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⑦
⑧
⑨
⑩
⑪
Solo Slough
COAL
CREEK
SLOUGH
North Bank
N

NOTE: Not to scale.
Bends and most branches in slough not shown.

Figure 7. Coal Creek Slough study site

Table 15. SAMPLING STATIONS COAL CREEK SLOUGH STUDY SITE

Station No.	Station Description
C-1	Solo Slough near E. bank about 7.9 km above mouth of Coal Creek Slough. About .24 km south of where highway crosses Coal Creek Slough.
C-2	Solo Slough in mid-channel opposite station C-1.
C-3	Solo Slough near W. bank opposite station C-1.
C-4	Coal Creek Slough near N. bank about 6.4 km above mouth.
C-5	Coal Creek Slough in mid-channel opposite station C-4.
C-6	Coal Creek Slough near S. bank opposite station C-4. In gap between log rafts.
C-7	Water surface in gap between logs in a raft of cedar logs located near station C-6.
C-8	Coal Creek Slough near N. bank about 7.2 Km above mouth.
C-9	Coal Creek Slough near mid-channel opposite station C-8.
C-10	Coal Creek Slough near S. bank opposite station C-8.
C-11	Water surface in a gap between logs in a raft of Douglas-fir logs located near station C-10.

comprised the bottom at most of the stations in Coal Creek Slough (Table 16). Large pieces of bark frequently prevented the Ponar grab from closing and obtaining a quantitative sample. Bark which remained in the dredge ranged from 5 - 50 mm wide to 25 - 450 mm long. The bottom materials were examined at six locations throughout the length of Coal Creek Slough in addition to the regular sampling stations. Bark and wood fragments were common throughout the study area. Strands of cedar bark up to six feet long and small gobs of natural resin were frequently encountered in the lower reaches of the slough.

The water was 2.7 m deep in Solo Slough and ranged from 3.4 to 10.4 m deep in Coal Creek Slough (Table 16). No flow was observed throughout the study site and the water was dark and murky. Transparency, as measured with a Secchi disc, was 1.4 m in Coal Creek Slough.

Dissolved oxygen was low, averaging about 5 mg/l in Solo Slough and only 3 mg/l in Coal Creek Slough. The values in the latter slough were below those considered marginal for a healthy aquatic community. Other chemical constituents varied little throughout the site. The COD averaged over 24 mg/l, higher than at the other log rafting sites (Table 17).

The predominant bottom-dwelling animals in both sloughs were sludgeworms, common inhabitants of enriched or polluted environments. They comprised 95 to 98 percent of the approximately 3,268 organisms/m² in Solo Slough. In Coal Creek Slough they made up 93 to 96 percent of the 5,531 to 8,597 organisms/m² at C-5 and C-6 and appeared to be the predominant animals in the non-quantitative samples (Table 16, App. G).

Solo Slough, not subjected to log rafting, did not seem to be of any better quality based on kinds and numbers of bottom-dwelling organisms than heavily rafted Coal Creek Slough. Degraded biological conditions were apparent in both sloughs. Since only stations C-5 and C-6 in Coal Creek Slough could be sampled quantitatively, precise comparisons between the bottom populations and bark deposits of the two sloughs were not possible. The low level of dissolved oxygen in Solo Slough was very likely influenced by the extensive bark deposits in Coal Creek Slough. The predominance of sludgeworms in both sloughs was a probable response to these low oxygen levels.

The lack of flow throughout the study area was certainly a major contributing factor to the degree of pollution. Tidal

Table 16. COAL CREEK SLOUGH STUDY SITE BOTTOM DWELLING ORGANISMS

Station[a]	No. Genera	No./m^2	Depth m	Bottom Type	Volume per sample, cc	
					Bark	Detritus
July 16, 1969						
C-1	3	3,369	2.	Silt, detritus	0	62
C-2	4	3,088	3	Silt, detritus	0	120
C-3	3	3,347	2.7	Silt, detritus	0	120
C-4[b]	4	-	3.4	Silt, ooze, detritus, bark	-	-
C-5	4	5,531	6.4	Silt, ooze, detritus, bark	25	90
C-6	6	8,597	6.1	Silt, ooze, detritus, bark	90	70
C-8[b]	3	-	6.7	Hard	-	-
C-9[b]	6	-	10.4	Silt, ooze, detritus, bark	-	-
C-10[b]	5	-	6.7	Silt, ooze, detritus, bark	-	-

---

[a] One sample per station.

[b] Non-quantitative sample only.

Table 17. COAL CREEK SLOUGH STUDY SITE WATER CHEMISTRY DATA

Sta. No.	Sample Depth m	Temp. °C	DO (mg/1)	pH	Cond. µmho	SS (mg/1)	VSS (mg/1)	Color Pt. Co.	Turb. Jksn	PBI (mg/1)	COD (mg/1)	BOD (mg/1)	Ortho P (mg/1)	TKN (mg/1)	NO_3-N (mg/1)
July 16, 1969															
C-2	0	19.0	5.7												
C-2	2.7	19.0	4.7	6.9	257	16	4	50	12	<1	27	2	.011	0.8	.09
C-4	0	21.0	3.6												
C-4	3.4	19.0	3.6	6.8	227	14	3	50	10	<1	20	2	.019	0.9	.1
C-6	0	20.0	3.9												
C-6	6.1	18.5	3.7	6.8	232	52	6	50	22	3	26	1	.021	0.8	.1
C-7	0										36				
C-8	0	20.0	3.0												
C-8	6.7	19.0	2.4								17				
C-10	0	20.0	3.0												
C-10	9.8	19.0	1.6								22				
C-11	0										22				

fluctuations in the Columbia River probably resulted in some back and forward movement of water but its diluting effects would have been minor. Since the oxygen demand exerted by the decomposing bark was not satisfied by fresh water coming from upstream, it consequently lowered what little oxygen was available in the immediate area. The lower dissolved oxygen levels and organic ooze in the bottom deposits of Coal Creek Slough demonstrate an aspect of damage to the aquatic environment by extensive bark deposits.

MULTNOMAH CHANNEL STUDY SITE

Multnomah Channel study site is on the western edge of the Multnomah Channel near Scappose, Oregon. The site includes a raft make-up area and a raft storage area. Logs are hauled to the site by truck, lowered into the water by a crane, graded, sorted, and grouped into rafts. Smaller logs are banded into bundles. About 47,000 m^3 are handled annually. There are raft storage areas scattered along both shores upstream and downstream from the study site; however, the total amount of log handling in Multnomah Channel was not determined.

Multnomah Channel is part of the Willamette River. It branches off from the main channel about 3.2 km upstream from the mouth and flows into the Columbia River at St. Helens, Oregon. The channel is about 34 km long and about 122 - 305 m wide. Tidal action extends this far upstream. A computer study of the Columbia River shows that under some low flow conditions the flow in Multnomah Channel would be reversed during high tide (Callaway 1970). Waste discharges to the Willamette River in the Portland-Oregon City area have some effect on water quality in Multnomah Channel. No attempt was made during this study to evaluate the changes in water quality due to these other waste sources. Six stations were established within and near the log unloading and rafting area and were sampled in August, 1969 (Fig. 8).

The bottom of the Multnomah Channel in the study area was basically silty-sand (Table 18). Bark and detritus deposits were also present within the unloading and raft make-up area but only small amounts of bark were collected at M-6 across the channel. Downstream from the unloading area at M-5 the bottom was very hard; no sample could be collected. Some bark, 150 cc, was in the bottom sample collected in the immediate unloading area at M-2. Downstream from this station at M-3, 270 cc of bark were collected. This increase was probably due to water current, both natural and that set up by the unloading of the bundled logs. Detrital material, equal in volume to the amount of bark at these

Station No.	Station Description
M-1	Multnomah Channel near west bank about 140-180 meters upstream from log unloading area.
M-2	Multnomah Channel at log unloading area.
M-3	Multnomah Channel about 25 meters from west bank and 75 meters downstream from log unloading.
M-4	Across the channel from Station M-2. About 15 meters from east bank.
M-5	Multnomah Channel near west bank approximately .5 km below log unloading area.
M-6	Across the channel from Station M-5. About 15 meters from east bank.

Note: Not to scale.

Curve in channel not shown.

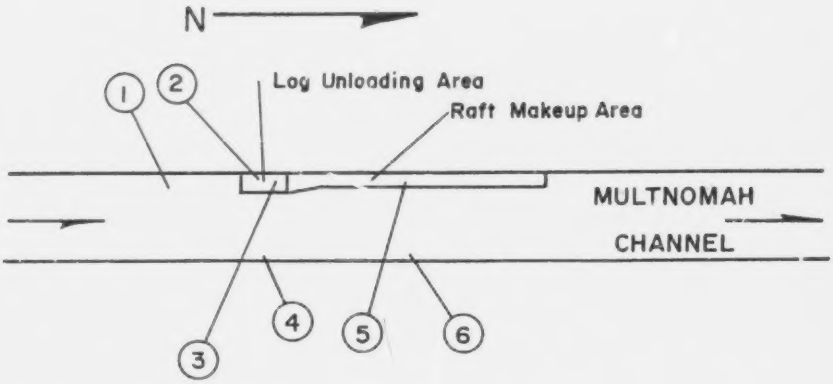

N
①
②
Log Unloading Area
Raft Makeup Area
MULTNOMAH
CHANNEL
④
⑤
⑥
③

Figure 8. Multnomah Channel study site

Table 18. MULTNOMAH CHANNEL STUDY SITE BOTTOM DWELLING ORGANISMS

Station[a]	No. Genera	No./m^2	Depth m	Bottom Type	Volume per sample, cc	
					Bark	Detritus
August 12, 1969						
M-1	1	560	5.5	Silty-sand	0	90
M-2	3	431	2.1	Silty-sand, gravel, detritus, bark	150	160
M-3	8	5,145	5.8	Sandy-silt, gravel detritus, bark	270	250
M-4	3	474	9.8	Sandy, detritus	0	22
M-5[b]	-	-	12.2	Hard	-	-
M-6	5	2,292	7.6	Silty-sand, detritus, bark	6	5

---

[a] One sample per station

[b] No sample

two stations, was probably associated with the logging activities since very little of it was found upstream or across the channel. The bark collected in the samples ranged from 40-55 mm wide and from 6-150 mm long. Small amounts of natural resin were found in the bottom materials at each station except M-5. Gas bubbles, presumably from anaerobic decomposition, were observed on a reconnaissance survey in October, 1968.

The water was only 2.1 m deep at the unloading area and increased to 12.2 m at M-5 (Table 18). Transparency, as measured with a Secchi disc, was 0.91 m. The water, murky at all stations, was characterized by a piney or resinous odor in the vicinity of the unloading area.

Chemical water quality was fairly uniform at all stations. Dissolved oxygen was somewhat low (5.1-5.3 mg/l), near the marginal level for a healthy balanced aquatic community. Organics were also low as indicated by the COD (9-11 mg/l) and BOD (1-2 mg/l) concentrations. Suspended solids ranged from 16-28 mg/l and were mainly inorganic (Table 19).

The poor water quality of the Multnomah Channel was reflected by the predominance of sludgeworms at each station (App. H). These organisms, often associated with enriched or organically polluted conditions, comprised from 93 to 100 percent of the population at stations M-1, M-2, M-3 and M-6. Slightly better quality was indicated across the channel at M-4 where scuds made up 20 percent and sludgeworms 77 percent of the population. However, M-6, also across the channel, had 93 percent sludgeworms.

Station M-3, with 5,145 organisms/m^2, had from two to ten times more organisms than the rest of the stations. Although more variety was indicated by the eight different genera present here, serious degradation was still shown by the sludgeworms which comprised 94 percent of the population. The larger amounts of detritus at this station probably represented a habitat more conducive to increases in numbers and variety than did plain, silty-sand bottom materials (Table 19).

Water quality in this section of the Multnomah Channel was degraded, particularly biologically. Bark deposits were not extensive and were generally limited to the unloading and rafting area. However. the bottom dwelling organisms indicated degradation was common even across the channel from the handling activities. The small number of samples collected were inconclusive as to whether conditions were better or worse within

Table 19. MULTONOMAH CHANNEL STUDY SITE WATER CHEMISTRY DATA

Sta. No.	Sample Depth m	Temp. °C	DO (mg/l)	pH	Cond. µmho	SS (mg/l)	VSS (mg/l)	Color Pt. Co.	Turb. Jksn	PBI (mg/l)	COD (mg/l)	BOD (mg/l)	Ortho P (mg/l)	TKN (mg/l)	NO_3-N (mg/l)
August 12, 1969															
M-2	2.1	21	5.3	6.0		16	2	25	5		11	2	0.26	0.22	0.44
M-3	4.3	21	5.2			20	2	25	6		9	1			
M-4	10.7	21	5.2	6.8		28	4	30	8		10	2	0.21	0.26	0.44
M-5	12.2	21	5.1	6.2		24	4	15	5		9				
M-6	7.62	21	5.1	6.6		22	1	15	6		10				

or outside of the unloading area. There is little doubt that if the entire channel contained extensive bark deposits with their subsequent smothering action and anaerobic decomposition, the presently degraded conditions would only worsen.

SIUSLAW RIVER STUDY SITE

Siuslaw River study site extends from Mapleton, Oregon, to about 7.6 km downstream. Just downstream from Mapleton there is a sawmill, stud mill and a plywood mill. Logs are stored in wet decks and when needed are debarked and placed in the water along the north bank. Peeler cores from the plywood mill are temporarily stored in the river until used in the stud mill. About 142,000 m³ of logs are handled annually, mainly fir with some hemlock.

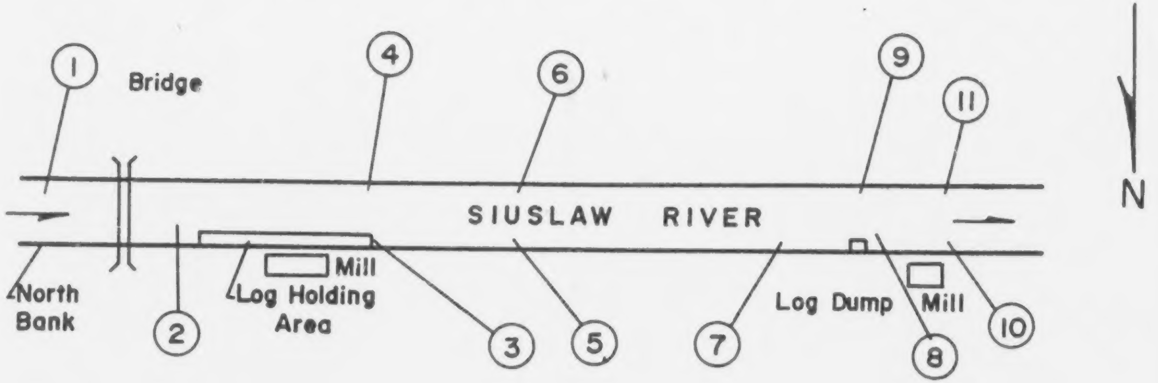
There is another sawmill about 7.2 km downstream from Mapleton. Logs are trucked to this sawmill, dumped into the river, grouped into rafts and stored until needed. The raft storage area extends about 1.6 km upstream and 21 km downstream from the sawmill. Approximately 70,000 m³ of logs, consisting of 85 percent fir, 10 percent hemlock, and 5 percent cedar, are handled annually. The inventory of logs in storage is usually about 12,000 m³, but may go as high as 21,000 m³.

The Siuslaw River drains an area of 2,002 ha and flows into the Pacific Ocean. Most of the area upstream from the study site is forested. Precipitation in the area varies from 101 to 254 cm. Duringlow flow in the summer, salt water intrudes as far upstream as Mapleton, 32 km from the ocean. Domestic waste disposal at Mapleton, population 700, is by septic tanks. There does not appear to be any significant waste discharges upstream from the town.

The Siuslaw River is a good coho salmon, steelhead and cutthroat trout producer. It also has a good fall chinook run. Most of the fish production occurs in the tributaries since these have lower summer water temperatures and greater quantities of spawning gravel (OSWRB 1965).

Ten sampling stations established in log dumping and rafting areas were sampled during September, 1969 (Fig. 9, Table 20).

NOTE: Numerous log rafts tied along the river are not shown in the diagram below.



1
Bridge
4
6
9
11
N
SIUSLAW RIVER
North Bank
2
Mill
Log Holding Area
3
5
7
Log Dump
Mill
8
10

Figure 9. Siuslaw River study site

Table 20. SAMPLING STATIONS SIUSLAW RIVER STUDY SITE

Station No.	Station Description
S-1	Siuslaw River approximately 0.8 km upstream from bridge.
S-2	Siuslaw River near N. bank about 0.8 km downstream from bridge.
S-3	Siuslaw River near N. bank about 3.2 km downstream from bridge.
S-4	Across river from station No. S-3.
S-5	Siuslaw River near N. bank about 4 km downstream from bridge. In gap between two log rafts.
S-6	Across river from station S-5. In gap between two log rafts.
S-7	About 6.4 km downstream from bridge. In gap between two log rafts.
S-8	Siuslaw River about 7.2 km downstream from bridge. About 22.8 m downstream of log dump on N. bank.
S-9	Across the river from station S-8.
S-10	Siuslaw River near N. bank about 7.6 km downstream from bridge. About 180-275 m downstream from mill.
S-11	Across the river from station S-10.

The bottom of the Siuslaw River study area was mainly silty-sand with varying amounts of bark and detritus (Table 21). Although no large bark deposits were observed, no station where a sample could be collected was without some bark. A hard bottom prevented quantitative sample collecting at S-4 and S-11. Ooze, with an odor typical of anaerobic decomposition, was the predominant material at S-8 near the log dump. This sample also contained 215 cc of bark, almost 3 to over 40 times as much as at the other locations. The bark at all the stations combined ranged in size from 4-40 mm wide, to 10-200 mm long. Natural resin was found in samples at S-2, S-5, S-6, S-8, and S-10. The samples at stations S-3 to S-7 contained from 8-50 cc of detrital material while about 200 cc were collected at stations S-8 to S-10.

Transparency, as measured with a Secchi disc, was about 1.8 m throughout the study area. The water was 7.9 m deep at S-8 near the log dump; depths at the other stations ranged from 3.4 to 4.6 m (Table 21). Numerous bark chunks were floating on the surface throughout the area.

Dissolved oxygen was low throughout the study site (4.5-6.3 mg/l) and tended to be marginal for a healthy aquatic community upstream at station S-1. There was little difference in oxygen concentration from the surface to the bottom at several of the stations. Color, turbidity, PBI and nitrogen were all fairly uniform. COD ranged from 6-8 mg/l at most of the stations and was at 12 and 26 mg/l at stations S-1 and S-10, respectively. Salt water intrusion was reflected in the increase in chlorides as the river progressed downstream. Chlorides in the upper reaches were about 10 percent of that expected in the ocean; values in the lower reaches were about 25 percent (Table 22).

Station S-2 was upstream from a section of the river used for barked log storage; station S-3 was just downstream from this area (Figure 9). The bottom was degraded at both locations as indicated by the high percentage of sludgeworms, about 98 percent of the 21,016 and 10,342 organisms/m^2 at these two stations, respectively (App. I). Slightly better conditions may have existed at S-2, however. Ten different genera were collected at this station and only five at S-3. This increased variety may have been a response to the larger amounts of detritus at the upstream station. One hundred fifty cc of detritus were in the sample from S-2, five times as much as at S-3. Bark deposits at both stations were minimal. Station S-4, across the river from S-3, could not be sampled quantitatively (Table 21).

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SECTION VII
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possible problems. The seemingly better conditions, as indicated by the bottom dwelling animals, at S-10 may also have been an indicator of increased salinity in this area of the study site and not necessarily a response to improved bottom conditions.

Aquatic scuds are commonly associated with good water quality; however, the scuds in this area of the Siuslaw River were a marine type, certain species of which can adapt to brackish or fresh water. Their presence in the lower reaches was a more probable response to the increased salinity than improved bottom conditions. These organisms were found with varying amounts of bark and detritus and were not definitely associated more with one material or the other.

Most sludgeworms, or oligochaetes , are fresh water forms and are not generally found in areas subjected to salt water. Their decrease in the lower reaches and predominance at the upstream stations was a very probable response in the increasing salinity. The sludgeworms were also found with varying amounts of bark and detritus.

The number of different genera per station were related to the amount of detritus in each sample. Five to six genera were found in samples with 8 - 50 cc of detritus while 9-12 genera were found in samples with 150-210 cc of detritus. No such relationship was apparent between the number of genera and the amount of bark.

Decomposing bark and other bottom materials could be a cause of the generally low dissolved oxygen values (4.5 - 6.3 mg/l). In addition, low river flow accompanied by current reversals due to tidal action probably prevent a needed constant flushing with fresh water from upstream. Additional or larger deposits of decomposing bark on the bottom in this situation could only serve to worsen conditions and also could be a threat to anadromous fish migration.

Esthetically, log rafting activities in this section of the Siuslaw River were responsbile for a reduction in the recreational value of the stream. Numerous bark chunks and other logging debris were frequently observed on the surface.

Stations S-5 and S-6, on opposite sides of the river from each other, were both adjacent to log rafts (Fig. 9). Sludgeworms comprised from 94 to 98 percent of the bottom dwelling animals at both locations. Total populations ranged from 10,276/m² at S-5 to 4,197/m² at S-6. Only five genera were collected from each of these staions. There were 50 cc or less of detritus and up to 14 cc of bark in the samples collected here (Table 21, App. I).

Station S-7 was farther downstream in a rafting area (Fig. 9). Only slightly over 2,475 organisms /m² were collected here,. Sludgeworms comprised only 19 percent of the bottom animals while a type of scud common in marine waters made up 48 percent. This sudden decrease in sludgeworms is difficult to explain since the bottom type was not essentially different from station S-6 upstream. The large increase in scuds may have been a response to increasing salinity (Table 21, App. I).

Degraded conditions were evident at S-8, just downstream from a log dump (Fig. 9). Sludgeworms comprised 77 percent of the bottom-dwelling animals, pollution-tolerant red midge larvae 12 percent and scuds only 3 percent. The amount of bark in the sample at this station was 215 cc, while across the river at S-9 there were only 40 cc. Slightly better conditions at S-9 may have been indicated by a small decrease in the percentage of sludgeworms to 70 percent and an increase in scuds to 12 percent. No red midge larvae were collected here. Total numbers of organisms ranged from 5,079/m² at S-8 to 7,232/ m² at S-9 (Table 21, App. I).

Station S-10 was on the same side of the river and downstream from S-8 in an area free from log rafts (Fig. 9). Over 12,900 organisms/m² were collected here. Sludgeworms made up only 29 percent of the population, scuds 58 percent and red midge larvae 14 percent. Polychaete worms, usually found in brackish or marine waters, comprised 6 percent of the animals. Increased varity and seemingly better quality was indicated by 12 different genera collected at this station. Only 12 cc of bark were in the bottom sample from this location; the amount of detritus was the same as at the two previous stations, about 200 cc. No sample could be collected across the river at station S-11 (Table 21, App. I).

Comparisons between the bottom-dwelling animals of the Siuslaw in areas subjected to log dumping or rafting to populations in areas not used for these activities are very difficult. The relatively small number of samples collected at this study site can only indicate what conditions actually are and perhaps emphasizes some

Table 22. SIUSLAW RIVER STUDY SITE WATER CHEMISTRY DATA

Sta. No.	Time PBT	Sample Depth m.	Temp. °C	DO (mg/l)	pH	Cl (mg/l)	Color Pt. Co.	Turb. Jksn	PBI (mg/l)	COD (mg/l)	BOD (mg/l)	Ortho-P (mg/l)	TKN (mg/l)	NO_3-N (mg/l)
September 10, 1969														
S-1	1040	4	20.5	4.5	6.4					12				
S-2	1010	3	20.0	5.1	6.5	1790	15	4	2	8	<1	.002	0.4	.02
S-3	1115	3	20.0	5.8	6.7	1960	15	3	2	6	<1	.003	0.5	<.02
S-3	1120	0	20.0	6.3										
S-4	1135	3		5.2	6.5	2100	15	5	2	6	2	.01	0.4	<.02
S-4	1140	0		5.9										
S-8	1335	7.3	20.5	5.9	6.4	4820	15	4	1	6	<1	.04	0.4	.02
S-8	1340	0		5.9										
S-9	1350	3		5.9	6.4	4620	15	5	1	5	1			
S-10	1410	3.4	20.5	6.2	6.8					26	-			
S-11	1425	4.6			6.4					6				

Tide appeared to be coming in throughout the time of sampling. In a mixture of fresh and ocean water the solubility of oxygen decreases as the salinity increases. With zero chloride concentration the solubility is 9.2 mg/l at 20°C as compared to 8.7 at a chloride concentration of 5,000 mg/l.

Table 21. SIUSLAW RIVER STUDY SITE BOTTOM-DWELLING ORGANISMS

Station a/	No. Genera	No./m^2	Depth (m)	Bottom Type	Volume per sample, cc	
					Bark	Detritus
September 12, 1969						
S-2	10	21,016	3.4	Silty-sand, detritus, wood, bark	15	150
S-3	5	10,342	3.7	Silty-sand, detritus, wood, bark	5	30
S-4 b/	3	--	3.7	Hard	--	--
S-5	5	10,276	3.7	Silty-sand, gravel, detritus, wood, bark	8	50
S-6	5	4,197	3.7	Silty-sand, gravel, detritus, wood, bark	14	8
S-7	6	2,486	3.7	Silty-sand, detritus, bark	80	9
S-8	6	5,079	7.9	Ooze, silt, detritus, bark	215	200
S-9	9	7,232	3.7	Silty-sand, detritus, bark	40	210
S-10	12	12,904	4.6	Silty-sand, detritus, bark	12	210
S-11 c/	--		4.6	Hard	--	--

a/ One sample per station.

b/ Non-quantitative sample.

c/ No sample.

Senator MURKOWSKI. Thank you very much.

You, sir, I presume, are a person who has dedicated your life to forest management.

Mr. PETERSON. Yes, sir.

Senator MURKOWSKI. There seems to be a good deal of question as to what happens to the water quality when you put a log in the water. I assume that that is the primary method of transporting logs in certain areas.

Do you have any scientific comparison as to which has more environmental impact, a logging road or the realities associated with the effect bark may have on the biology of fisheries?

Mr. PETERSON. Let me say that I have listened with some astonishment at the idea that somehow logs delivered by helicopter, which we are using because of its environmental acceptability in many locations, somehow become point source pollution. That is a novel idea when you consider that helicopter transport is used in many cases to prevent building roads or other types of facilities that have greater environmental impact. To suddenly say that that is analogous to a pipe or a ditch is a novel idea.

Specifically, logs have been transported by water in this country for hundreds of years, and we know of no great environmental problems with transporting logs by water. Barks and trees are a natural ingredient of Alaska surface waters. Certainly in salmon waters and others, trees are a natural component of the aquatic environment.

Now, if you ground up a bunch of bark and put it into a small stream, certainly it could have some environmental impact. But transporting it by helicopter to a ship off the shore, certainly it is outside of my experience to think that that would be a problem.

I will be glad to look at whatever we have in our research record and advise you further, but I certainly do not know of any major problems from that.

Senator MURKOWSKI. Thank you.

My first question of the witnesses is to Mr. Horn. I am wondering if there is any other alternative to this dilemma that you, as a representative of the Department of the Interior, may have in mind.

Mr. HORN. None that we can think of. Obviously, the chief has indicated all of the problems with coming up with alternatives. It seems to me that since the Sierra Club has been one of the major antagonists, maybe they could come up with some proposals to find equivalent timber lands in one of the other wilderness areas so there is no adverse effect on the guaranteed board-foot yield that is also included in law.

Senator MURKOWSKI. Are you suggesting that the opponents support a release of land in another wilderness area?

Mr. HORN. If Admiralty is so much more important than other areas.

Senator MURKOWSKI. Do you have any that you would recommend?

Mr. HORN. No, not me. Or possibly they could use their tax-exempt status to come up with $176 million to buy out Shee Atika's interests. Those are the types of things that strike me.

Senator MURKOWSKI. I wonder if it is for sale.

Mr. HORN. Well, I just said, those are really about the only two proposals I can think of.

Senator MURKOWSKI. In this cloud on the title of the land, and in the conveying process, which is your responsibility, has there ever been an Alaska lands transfer that would even remotely relate to the complexities associated with the Shee Atika matter?

Mr. HORN. Well, I think that there is not much complexity here. We have issued conveyance in accordance with a congressional directive. It is much the same as issuing a conveyance in accordance with a private bill. The only reason it is complex is because people continue to challenge it in courts, and the courts will not give a ready decision. Congress then, of course, has confirmed it.

We frankly share some of the frustration with Shee Atika, in that we are codefendants in some cases. In other cases we have filed amicus briefs or are asking to file amicus briefs on behalf of Shee Atika to get the title cleared. We think it is good, bankable, absolutely clear title, if only the courts would recognize it as such and also go along with the will of Congress.

Senator MURKOWSKI. Do you think that Shee Atika has a basis for anything more than an expression of displeasure toward the U.S. Government for the Government's inability to grant full right, title, and use to Shee Atika's lands?

Mr. HORN. Well, the Congress has said, "You have this land," and the executive branch has complied. Our only problem is getting the judicial branch to recognize what the other two have done.

Senator MURKOWSKI. Well, thank you for your input and the suggestion. We will make sure that that question is posed to those who might be able to respond to it.

The next question would be to Mr. Bruce Barrett of the EPA. I would like to question the environmental impact statement that is due in May. I assume that it is primarily under the Corps of Engineers, but do you not have to have it before you can issue your permit? Are they two totally separate processes, or is one dependent on another?

Mr. BARRETT. No, sir, they are not completely separate. For a new source, which I presume the Shee Atika operation would be, under the National Environmental Policy Act if the issuance of a permit for that operation is considered to be a significant—I forget the terms of NEPA—but a significant activity on the part of EPA, a significant effect on the human environment, then an environmental impact statement is required.

In this case, however, since the Corps of Engineers is already developing an environmental impact statement, a separate statement by EPA would not be required. I believe I heard the colonel indicate that the environmental impact statement was due, I believe you said, in December of this year.

Colonel AMRINE. The draft is due.

Mr. BARRETT. The draft is due in December of this year, so EPA would not be required to develop a separate one.

Senator MURKOWSKI. In your definition of point source discharge—which has been discussed at some length, and various witnesses have had observations as to its appropriateness—is this a regulation, an interpretation of a regulation, or a court-expanded interpretation?

Mr. **Barrett**. The latter, sir.

Senator **Murkowski**. So it was not necessarily in your vocabulary that a log was a point source discharge until such time as the court came down and, in effect, made that observation for you.

Mr. **Barrett**. That is correct, sir.

Senator **Murkowski**. At that point in time you adopted that as the rule of the EPA and enforced it. Is that right?

Mr. **Barrett**. Well, you know, obviously we are bound to comply with the directive of the court.

Senator **Murkowski**. All right. However, you were directed in this instance to apply it to Shee Atika, and as a consequence you are now proceeding with their permit. Correct?

Mr. **Barrett**. Correct.

Senator **Murkowski**. You are not enforcing the court's interpretation over Forest Service lands which are public lands, but you are enforcing it on private lands because of the court dictate to Shee Atika. Is that generally correct?

Mr. **Barrett**. That is generally correct, although, as I mentioned earlier in my testimony, we are considering—in the event that there are problems raised in other areas—we are considering the development of a general permit that would have the effect of permitting all such or similar operations within the State of Alaska.

Senator **Murkowski**. What is your timeframe on that?

Mr. **Barrett**. About the same as what it would be for the individual——

Senator **Murkowski**. About 6 months?

Mr. **Barrett**. Well, a general permit generally would take a little bit longer, because a general permit has the effect of a regulation. Therefore, instead of just public notice in a newspaper, as we would do for an individual permit, we had to publish in the Federal Register. We also had to have, at this point in time at least, clearance by OMB.

Senator **Murkowski**. Do you have the authority to litigate or appeal to the court, a court interpretation of an applicable regulation, in this case the definition of a point source discharge?

Mr. **Barrett**. Yes, sir. I am sure we could if——

Senator **Murkowski**. Has it been done in this case?

Mr. **Barrett**. No, sir, it has not.

Senator **Murkowski**. Is there a reason it was not done.

Mr. **Barrett**. I do not know.

Senator **Murkowski**. Who makes that decision in EPA?

Mr. **Barrett**. Well, I presume that our Office of General Counsel would make that decision.

Senator **Murkowski**. I would appreciate it, for the record, if you would submit a response to the question of whether or not this matter was considered, because it certainly is significant. It would seem to me that if indeed a log is a point source discharge, you have substantial litigation in front if you are going to enforce or change permitting, or even if you attempt to get a broad categorical application of a procedure.

Mr. **Barrett**. Senator, let me tell you one reason that I think that the agency might not appeal it. We have lost a similar suit in the Caribbean area, where the Navy was shelling into an uninhabited island down in the Puerto Rico area. Some of those shells were finding their way into the water, the ocean waters off of this island. I forget the name of the island.

Senator MURKOWSKI. Who won the suit?

Mr. BARRETT. The residents in that general area.

Senator MURKOWSKI. I just do not see the similarity between a bomb or something dropped from an airplane to explode something, and a log that is put in the water for transport. However, we are working on this one.

Mr. BARRETT. We will get back to you with a response to that, sir.

Senator MURKOWSKI. I would appreciate knowing why EPA did not consider this significant enough to initiate an appeal on the interpretation of point source discharge.

My next question will go to Colonel Amrine. I believe you have the responsibility with regard to issuance of the environmental impact statement due in May. Is that a 9-month process, too?

Colonel AMRINE. Sir, it can take that long, yes.

Senator MURKOWSKI. It can take that long, and this is the first time an impact statement has been issued with regard to a log dump, is that right?

Colonel AMRINE. Yes, sir.

Senator MURKOWSKI. Therefore, you do not have any expertise in it.

Colonel AMRINE. Well, we might clarify one thing, sir, and that is that the permit was issued over 18 months ago based on an environmental assessment, and that that requirement——

Senator MURKOWSKI. Yes; now you have to go back. No other log dump in Alaska—and Max, I do not know how many there are but there have been a lot of them, probably over 100. None of them have had to have an environmental impact study except this one. In recent years they have had to have an environmental assessment. However, this one has to have an environmental impact statement.

Colonel AMRINE. Yes, sir.

Senator MURKOWSKI. This is a special log dump, obviously.

Colonel AMRINE. It is special because of the litigation, sir.

Senator MURKOWSKI. You say it can take 9 months. How long have you been working on it?

Colonel AMRINE. Sir, the agreement with the court occurred last year, last March 30, and so this will take 13 months from beginning to end.

Senator MURKOWSKI. Why? Who says it takes 13 months? Why can you not do it in 9 months?

Colonel AMRINE. Sir, the process is one that is specified in the regulations that implement the law.

Senator MURKOWSKI. Therefore, every environmental impact study for a log dump takes 13 months. That is what the law says.

Colonel AMRINE. Not necessarily, sir. It depends upon what is determined as a result of the input that is received from the public notice, what information is received from persons testifying before public hearings, what information is received from State.

Senator MURKOWSKI. I know, but we started last March. Are we halfway through?

Colonel AMRINE. Sir, we will have the draft done in December. I would say we are halfway through at that point.

Senator MURKOWSKI. You will have the draft done in December, and then what do we have to do?

Colonel AMRINE. Sir, then we have additional public hearings. Then we complete the draft and go final with it, and then we review the final.

Senator MURKOWSKI. That takes from December to May?

Colonel AMRINE. Yes, sir.

Senator MURKOWSKI. Why?

Colonel AMRINE. Sir, the——

Senator MURKOWSKI. EPA is holding hearings on the closure of two mills in Alaska that employ 10,000 people, and they are appearing one afternoon for 2½ or 3 hours for public testimony in Ketchikan and the same thing in Sitka the next day. Yet this EIS process takes from December to May to hold public hearings? Don't you just give proper notice and hold your hearings?

Colonel AMRINE. That is part of the point, sir. You do give proper notice. That is a requirement. You do hold the hearings, and then you do analyze the results and write the final report, and then folks have an opportunity to comment on that.

Senator MURKOWSKI. Is this a corps policy or is this in law?

Colonel AMRINE. Sir, it is the regulations that implement the law. We are moving as fast as we can, sir, to resolve this particular EIS and complete it. I can assure you of that, and if we can move faster, we will.

Senator MURKOWSKI. Will it be ready in May?

Colonel AMRINE. From every indication we have at the moment, yes, sir.

Senator MURKOWSKI. Well, I got a pretty good commitment from Bruce Barrett that he would have his out.

Colonel AMRINE. Sir, I have to say subject to what we find out during the public hearing and subsequent information that may be presented. That may delay it, but that is something we can't forecast at the moment.

Senator MURKOWSKI. Mr. Barrett is going to issue his decision. He didn't tell me how he was going to issue it but he said he would issue it, in the sense of coming out with a finding, either favorable or unfavorable. However, you are saying that depending on the objections, the decision could theoretically be extended further. Don't you reach a point where you have enough and you make a decision based on that. You could go on forever.

Colonel AMRINE. Yes, sir, you could. However, we expect that we will have done that by the first of May.

Senator MURKOWSKI. OK, but you won't provide for the record an assurance that you will release your analysis on the environmental impact study by the first of May?

Colonel AMRINE. Sir, may I ask Mr. Lance Wood, who is our counsel in this area, to respond to that, please?

Senator MURKOWSKI. Sure.

Mr. WOOD. Senator, we would love to give you a precise date by which we can complete the NEPA process for this permit. We cannot do so for a couple of reasons. Let me explain very briefly.

We are moving as quickly as possible to process this permit and complete the EIS process. However, as the colonel has said, we have to take great care that every required step in our procedures is properly completed, because we realize that when we finally do get the EIS out and make a final decision to issue or deny this permit, there is every reason to expect another round in the lawsuit.

If we try to take any shortcuts, if we try to truncate the procedures, or if we were to make a promise to you today that we will complete our EIS process by a date certain, which we cannot state at this time since we don't have——

Senator MURKOWSKI. But you indicate you are going to be sued anyway.

Mr. WOOD. Senator, my presumption is that you want us to comply with the legal requirements in the regulations, so that the final decision to issue or deny this permit can withstand judicial scrutiny in the next round of the lawsuit.

Senator MURKOWSKI. That is right.

Mr. WOOD. That is what we intend to do. It is in the interest of all concerned that we follow the legally required procedures, and that is why we cannot give you any promise at this point of any particular date. We will do it as quickly as we possibly can, in full compliance with the law and the regulations.

Senator MURKOWSKI. You have been working on it since last March, right?

Mr. WOOD. We have been working on it, Senator.

Senator MURKOWSKI. How many people do you have working on it?

Mr. WOOD. Senator, we don't have people from the district to give you specific numbers of that sort, but all available resources are working on this project.

Senator MURKOWSKI. How did you happen to pick May?

Mr. WOOD. As the date to complete the process? We simply added up—to make a prediction—we added up the legally required steps that we have to take. For example, there is a 30-day process at the end of it. When the final EIS comes out, we have to give the public 30 days of comment, for example, before our record of decision is signed and the decision to grant or deny the permit made final.

Senator MURKOWSKI. I have no problem with 30 days but, you know, we are talking over a year now. We are talking 13 months.

Mr. WOOD. Every step in that procedure requires a certain amount of time.

Senator MURKOWSKI. All right. What I would like to have you do for the record is to submit your schedule, your original schedule, so we can examine that timeframe.

Mr. WOOD. We will be happy to do that.[1]

Senator MURKOWSKI. I assume that you sat down when you got this thing and put out a work schedule and a timeframe for your hearings, in accordance with the regulations that are substantiated by the law.

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[1] See p. 283.

Mr. **Wood**. We have made our best estimate on how quickly we can do it, but if we can move faster than what we have suggested is our best estimate, I assure you we will do that.

Senator **Murkowski**. Well, I would appreciate that consideration. We will look forward to receiving your basic work layout in handling this particular permit and expediting it. Obviously there are a couple of concerns. One is, this is the first one you have ever done. Right?

Mr. **Wood**. Senator, we did not conduct a research project to find out if this is the first log facility——

Senator **Murkowski**. I know, but the question was, is this the first you have ever done for a log dump?

Mr. **Wood**. To the best of our knowledge here, we think it is.

Senator **Murkowski**. Do you know how long it takes a logger to build a log dump?

Mr. **Wood**. I suppose it depends upon the log dump.

Senator **Murkowski**. You know, you put the logs in the water, and you protect your equipment, you protect the environment, you protect your site. Anyway, that is neither here nor there. We will look forward to receiving that. Please tell Colonel Saling that we understand why he cannot be here. We will look forward to receiving that information.

Mr. **Alexander**. The next panel will be the city of Angoon: Frank Sharp, city councilman; Ivan Gamble, president of Kootznoowoo, Inc.; Sterling Bolima, president of Kanalku Timber Management Corp.; and Glen Feldman, a staff attorney.

Senator **Murkowski**. Panel three, representing the city of Angoon, we have Frank Sharp, city councilman. Frank, welcome. Representing Kootznoowoo, Inc., Ivan Gamble, president of the corporation. Ivan, we welcome you. Mr. Sterling Bolima, president of Kanalku Timber Management Corp., and Mr. Glen F. Feldman, attorney. Mr. Feldman, we welcome you to the committee. We would ask that you proceed in whatever order you are so inclined. Please proceed, gentlemen.

STATEMENT OF IVAN GAMBLE, PRESIDENT, KOOTZNOOWOO, INC.

Mr. **Gamble**. Mr. Chairman, members of the committee, I am Ivan Gamble. I am the president of Kootznoowoo, Inc., the village corporation for the village of Angoon. Angoon is the only settlement on Admiralty Island, and the 562 residents are mainly native.

I had an opportunity prior to the hearing to look up the word "manipulated," and I was very upset by the definition of that word. I am nobody's puppet today, tomorrow, or ever. The mind that I speak today is mine and that of my people. I feel that we are the original environmentalists, and that the Sierra Club and other environmental groups are imitating our philosophy.

The previous presidents of Kootznoowoo, Daniel Johnson, Peter Jack, and I have been back here on numerous occasions to discuss the issue that is now before this committee. So that we do not cover all of the same ground again today, and to save time, I would like to enter some of the previous testimony and other material into the record of this meeting.

Senator MURKOWSKI. It will be entered as if read. Please proceed.

Mr. GAMBLE. Kootznoowoo has not been directly involved in the various lawsuits and actions pending since early 1981. We have been monitoring the situation, however, and at some point we may want to reconsider our position. Most of the 426 residents who have joined the city of Angoon in their petition to intervene in the Sierra Club lawsuit are our shareholders. We will have to do what we can to protect their interests if the need arises.

You may remember that last fall, in December, a rider was attached to an appropriations bill in the Senate. This rider was designed to solve Shee Atika's perceived problems and get them out of court. In its final version it seems that the language did not accomplish all of Shee Atika's goals, and they are back here before Congress again to ask for special legislation. It would be very convenient for all of us in the timber industry if we could come back before Congress every time we ran into a problem and get special legislation passed.

The Legislation that they are asking for this time would exempt them from certain environmental laws that they feel are impediments to their progress. We all live with the same laws. They may have more application to Shee Atika, since they selected their land in the middle of a national monument, but that was their choice. I have always questioned the wisdom of their selection, given the history of opposition to logging on Admiralty Island. I have included a brief history with my submission that shows some of the proposals for Admiralty Island, starting with Teddy Roosevelt's suggestion that it be made into a bear refuge in 1901, along with some of the statements of the people of Angoon that were made in 1972 in opposition to the U.S. Champion sale.

When Shee Atika first decided to select on the island, the area that they selected was already the subject of a lawsuit on the U.S. Champion sale. The opposition of the people of Angoon against timber cutting on Admiralty Island was a well-known fact at that time. The management of Shee Atika either chose to ignore this opposition or they thought that the people of Angoon would be afraid to fight for their land and their way of life.

Shee Atika claims that their shareholders have not received any benefits under the Claims Act. This is not only untrue, it is the opposite of the truth. Their shareholders receive distributions directly through Sealaska, just like Sealaska's "at-large" shareholders.

Therefore, the Shee Atika shareholders have received individual distributions of $6,904.65 each, whereas our shareholders have only received $1,700. This totals to over $13 million for Shee Atika and their 1,900 shareholders, compared to just over $1 million for our 623 shareholders. Shee Atika's shareholders are guaranteed this flow of mainly tax-free money forever, whereas we can only make payments to our shareholders out of profits that we generate. This money is taxable.

In early discussions on ANSCA, the plan was to make the Natives of Juneau and Sitka "at-large" shareholders of Sealaska, just like Petersburg, Cordova, Haines, Wrangell, and other towns in southeast Alaska. Due to a strong lobbying effort, section 14 of ANSCA was amended to allow them to select up to 23,040 acres in close proximity and surrounding their towns of Juneau and Sitka. Instead, they decided to select lands on Admiralty.

This decision can best be put in perspective through a statement made to Shee Atika at a meeting of the Village Presidents Association, of which I am a vice chairman. In responding to their requests for support against Angoon, a village president from Prince of Wales Island told them that they had knowingly selected land in one of the most environmentally sensitive parts of the forest, and they would have to live with that decision.

The Shee Atika shareholders have all of the benefits of the Sealaska "at-large" shareholder that live in other towns such as Petersburg, and they have successfully lobbied to get land on top of that. Now they come before you pleading poverty. It is the Natives of Petersburg and the other towns that did not get land that should be before this committee today.

This is not a case of brother against brother and sister against sister, as Shee Atika likes to portray this problem. This is a case of the people of Angoon against the Government. Shee Atika is not a party to any of the lawsuits filed by Angoon. They were filed against the Government because the people of Angoon believe that the Government did not take their concerns fully into account when it made certain decisions.

Shee Atika is not "a people" who have been denied rights. Shee Atika is a corporation, just like Kootznoowoo and U.S. Champion are corporations. The people of Angoon fought U.S. Champion, and I am sure if Kootznoowoo was trying to cut timber on Admiralty they would sue us too.

It is not out of malice toward the Sitka Natives that the people of Angoon are fighting this battle. The Angoon Natives are trying to preserve a way of life that has persisted on Admiralty Island for thousands of years. My mother, incidentally, holds shares in Shee Atika along with my uncle and cousins.

Shee Atika filed the first lawsuit in this battle because the Secretary of the Interior did not withdraw all of the lands that they had asked for. Kootznoowoo filed a lawsuit a month or so later, and solicited the help of the Sierra Club, who intervened later in the Kootznoowoo suit. The Kootznoowoo suit asked the Secretary to find land off the island for Shee Atika of equal or greater value.

In all of the legislation that was considered during ANILCA, there was always a provision that would allow Shee Atika to take land off the island of equal or greater value. They chose not to take advantage of any exchange provisions, and they made a conscientious and concerted effort to stay in the middle of a national monument, knowing full well that this would subject them to the full scrutiny of the many thousands of people who are interested in protecting Admiralty Island.

I am certain they have told members of the committee that they will sooner or later win in court, and they would like you to settle this issue through legislation. This is what they said the last time they came before Congress. This is a pretty self-serving statement. In the past they have gone to court to ask for additional time, saying that they expected that legislation would be passed which would settle the court cases. I suppose that Congress has the ability to deny the people of Angoon their day in court, but I do not believe that this should be done without a full understanding of the legal cases before the courts. Angoon can also make the argument that the community will win in court.

Senator MURKOWSKI. Mr. Gamble, I would request that you summarize your remaining statement.

REMAINDER OF PREPARED STATEMENT OF IVAN P. GAMBLE, PRESIDENT, KOOTZNOOWOO, INC.

It may be of interest to the committee to hear what Shee Atika was saying on July 5, 1977, at a hearing in Sitka. Nelson Frank, who was then the President and Chairman of the board of that corporation, said in part: "If the parties cannot settle, the courts will have to decide these questions. It is my purpose, however, to object to Congress in effect taking the litigation away from the parties and away from the courts and deciding in favor of the Sierra Club and Kootznoowoo.[1]

Kootznoowoo now comes before you with the same plea. All we ask of you is that you afford the citizens of Angoon the very basic right that Shee Atika asked for in 1977. That is the right to a full examination of the facts before a court and a judgment based on the merits.

We, like many of the Alaska corporations, have had problems. We made some bad investments in our early years. We took our lumps like any other businessmen and went on about our business.

Our land conveyance was held up for months while we negotiated with a private landowner in the area. Our Corps of Engineers permit took a year to get. We had to study the alternative sites twice. We had to relocate the log transfer facility once and change the layout twice. We hired a consulting firm (of which one of the partners was a Shee Atika shareholder) to dive in the bay for a week and prepare a report. This held us up for a couple of months while we waited to the proper tides and then the preparation of the report.

We naturally felt that all of this was unnecessary because there was already a log dump there that had been in operation for years.

Most of the arguments that Shee Atika will present to you today have been challenged in previous hearings on this same subject. Rather than waste your time with another discussion of these same points, I will submit their arguments and our rebutals for the record.

Shee Atika is not the only native corporation involved in litigation or suffering losses. Sixty-four Native corporations responding to a recent GAO study of Native corporations in Alaska said that they have been involved in administrative appeals or litigation concerning the Settlement Act. Of these, 46 said that the administrative appeals or litigation had an adverse impact on their economic development from a moderate to a very great extent. Furthermore, 41 village corporations and 3 regional corporations showed a loss in 1982; 6 village corporations had losses of over $1,000,000 in 1982.

It is clear that Shee Atika is not the only Native corporation involved in litigation or in financial trouble. As the GAO report indicates, further study of the needs of Alaskan Native corporations is promptly needed. The Department of the Interior has recently commissioned a study of the results of the Settlement Act which should cast more light on the subject.

The point is that Congress should not set the precedent of carving out special exemptions for Native corporations merely on the basis of alledged pending bankruptcy. To begin with, Shee Atika has valuable assets which can be traded and managed to provide substantial income. A bankruptcy, if there is that potential, due to cash flow will not be fatal to Shee Atika. To grant special exemptions would open the flood gates to requests from every other Native corporation for exemptions from the law. Also, if the Native corporations are perceived as having carte blanche from Congress, the outside pressures on these fledgling corporations will increase to intolerable levels. The GAO report also identifies such outside pressures as a major problem of Native corporations.

Moreover, Shee Atika is a special case. They have refused to accept lands off of Admiralty Island despite being offered more valuable lands elsewhere; they have chosen to remain in an area where their every move is destined to be watched closely and challenged by environmentalists and the Natives of Angoon; they have purchased a hotel which at last count was losing over $600,000 a year (more recent financial reports which may cast more light on Shee Atika's financial losses are under court protective order in Alaska); they have chosen to harvest timber in an area far away from the infrastructure associated with other timber harvesting operations, increasing the costs of doing business. In short, Shee Atika is primarily responsible for their own problems.

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[1] Hearings before the Subcommittee on General Oversight and Alaska Lands. Serial No. 95-16 Part VIII, page 27.

But instead of facing their problems realistically, Shee Atika choses to blame the Sierra Club. Let there be no mistake. Kootznoowoo does not always agree with the Sierra Club, but the Sierra Club is not the primary cause of Shee Atika's problems. Shee Atika has brought the roof in on themselves and seeks to place the blame elsewhere. But we seek not to affix blame, but rather to effect a solution by which everyone benefits.

Again I would like to express our desire to work toward an off-Island settlement for Shee Atika. I believe that if all of the time and effort that has been expended on this matter had been directed toward finding an off-Admiralty selection for them, we would not be here today. Kootznoowoo still feels that there is sufficient land in the Tongass National Forest to accommodate their selection, and we hope that this Committee will also consider this possibility.

Thank you for the opportunity to make this presentation. Kootznoowoo is willing to assist the Committee in any way we can to see that you can make a well-informed decision.

Mr. GAMBLE. To summarize Mr. Chairman, they have received benefits totaling over $13 million directly to their shareholders, and this is what it is all about.

We have not been manipulated. Our people do use Cube Cove. We do have subsistence rights.

Kootznoowooo has backed off Shee Atika. In fact, to put it into the words of one of our directors, "Don't kick them while they are down financially." Kootznoowoo has worked with Shee Atika to try to settle this, including an offer to loan them a small amount of money, in the amount of $25,000. Kootznoowoo has offered to exchange lands with Shee Atika in order to settle this.

Finally, we will continue to monitor this issue on behalf of our shareholders and their subsistence rights.

Thank you.

Senator MURKOWSKI. Thank you very much, Mr. Gamble.

The next statement is by Mr. Frank Sharp, city councilman, the city of Angoon. We welcome you before the committee, Mr. Sharp, and look forward to your testimony.

STATEMENT OF FRANK SHARP, CITY COUNCILMAN, CITY OF ANGOON

Mr. SHARP. Thank you, Mr. Chairman.

I have a statement here from the mayor of Angoon which he requested that I read into the record, if I may.

Senator MURKOWSKI. Please proceed.

Mr. SHARP. Thank you very much.

[Statement of Edward Gamble, mayor, city of Angoon, before the Senate Select Committee on Indian Affairs, November 2, 1983:]

PREPARED STATEMENT OF EDWARD GAMBLE, MAYOR, CITY OF ANGOON, AK

Mr. Chairman, members of the committee, my name is Edward Gamble and I am the newly elected mayor of Angoon. I was not able to travel to the hearing in Washington, D.C. today to testify. I ask that my statement be read at the hearing, and that the supplementary material I have sent be put in the record for this hearing.

You will see that much of the information I have provided to you today bears the signature of our previous mayor, Wally Frank, Sr. Some of it bears the signature of the mayor before him. My name will now be affixed to these and future documents.

I want you to know this: I want you to know that I have been directed to continue these efforts. I will do this not because I have been told to do it, but because it is my belief that we must do it to preserve the way of our life. I hope you appreciate the continuity that is displayed here because you will see that long before I was born and long after I die the Tlingit Indians of Angoon have and will continue to fight for our rights and our way of life.

Late last December we were surprised to find out that a rider had been attached to an appropriations bill that was designed to do the same thing that Shee Atika is asking you to do today: that is, to exempt them from what they consider to be troublesome environmental laws and regulations. This rider was put in without our knowledge by the Appropriations Committee, and we were never asked for our opinion on it. As a matter of fact, the language was written in such a way that we almost missed noticing it.

Once we were alerted by friends in Congress, we sent back some people and enlisted the aid of our friends in Washington, D.C. to bring our position to the attention of the Senate and Members of the House of Representatives. I have attached a copy of the rider and Chairman Yates' statement from the Congressional Record.

I am pleased to see that this committee is willing to hear from both sides of the story. I am sure that if legislation is proposed, we will be given every opportunity to comment on it and, if necessary, to oppose it through normal channels.

I understand that Shee Atika has told members of this committee that they will win in court. Our lawyers have told me that we will win in court. Realistically, nobody ever wins in court. We may win on some points and lose on others. The court may decide some issues in our favor that will have beneficial effects on our ability to continue our subsistence way of life. If they are telling you that they will win on every single point, we can only suggest that they are being overly optimistic.

Shee Atika continues to say that Angoon is being led around by the Sierra Club. We said a long time ago, and I will say it once more: the Tlinglet Indians of Angoon were working to protect Admiralty Island long before John Muir was a gleam in his father's eye. I doubt that more than 10 of the 426 people from Angoon that have just joined the Sierra Club suit ever met a Sierra Club member.

It is an insult to the people of Angoon and to the Sierra Club to suggest our cooperation is some sort of unholy alliance that Congress should do something about. To tell you the truth, the Sierra Club is a reluctant partner in this endeavor. They did not want to be viewed as being anti-Indian by opposing Shee Atika. We first had to talk Dr. Wayburn, the head of the Alaska Task Force of the Sierra Club, into it, and we had to call him on numerous occasions to urge the Sierra Club on. Recently after a bunch of bad press we thought that they might slack up, and again we talked to Dr. Wayburn and others in their organization to prop them up.

The fact that we are working together is not the issue here, although I am sure that Shee Atika would like you to concentrate on that, since it takes away from the real issue. We are also supported by the National Tribal Chairmen's Association and other Indian groups. The NCAI consists of 195 Indian tribes throughout the Nation with about 500,000 members. Are we then pawns of the Indians?

We said once that our supporters can be compared to the pilings that hold up our homes. Chipping away at the pilings will cause our homes to fall. This tactic is sometimes successful. I hope that the abuse that the Sierra Club is taking over this issue will stiffen their resolve. I ask them once again, publicly, "Please stick with us."

On October 26 of last year we memorialized the six people who died in the unfortunate bombing of our village 100 years before. This year on the same date we honored our elders on the 101st anniversary of this tragedy. It was because of our traditional cultural values that we survived as a people.

Through the years following the destruction of our village our people, left without shelter and with our food supplies gone, survived by subsistence, hunting and fishing. We continue to live a subsistence lifestyle. We do this both as a necessity and because it is our traditional way of living. Now we are asked to give up our culture and subsistence so that the Shee Atika Corporation can log on Admiralty Island, in complete disregard for the laws that have been made to regulate these activities.

I have attached some affidavits from people in Angoon who use the Cube Cove area. There are many more subsistence hunters and fishermen who are willing to testify in court about their use of the land around here. It is a common mistake for Shee Atika to state that we do not use Cube Cove for subsistence. It is a mistake because this is one argument that can easily be disproven. We will fill the court or this committee room with people from Angoon who regularly use Cube Cove. The affidavits I have provided to you today are just a general sample from my file here in Angoon.

Shee Atika will say that they had someone up at Cube Cove monitoring the activities and there was little activity. Had this person been monitoring the activities of the fish and deer, they would know why our people use Cube Cove when there are deer and fish available and when the weather allows.

They may believe that because they have cut a couple hundred acres and built a little bit of a road, we will fold our tents and go away, thinking the damage has been done. There are still 22,800 acres remaining of habitat for the deer we depend on. I want to assure you that Angoon will fight for every last acre. We fought for 132 acres for years, and we are fighting another battle over 152 acres. We are also fighting the Forest Service over six and one half acres. This, by the way, is without the help of the Sierra Club.

I want you to consider seriously what is said by the Angoon people with you today. They are emissaries of our elders and the people of Angoon. They are there to tell you that we will fight on.

Mr. SHARP. Thank you. That is the end of the statement of Edward Gamble.

Senator MURKOWSKI. Thank you very much for your statement. The next witness is Mr. Sterling Bolima, president of the Timber Management Corp. We welcome your testimony. Please proceed.

Mr. BOLIMA. Yes. I think Mr. Sharp has his own testimony to give.

Senator MURKOWSKI. Oh, excuse me. All right. I am going to limit your time, so please summarize your testimony.

Mr. SHARP. Yes, sir.

My name is Frank Sharp. I am here to represent the city of Angoon at these hearings. I am an Angoon city councilman and a stockholder in both Kootznoowoo and Shee Atika Native Corp. Having resided in Angoon and other communities in southeastern Alaska for most of my entire life, and having personally engaged in the subsistence way of life of the village, and as a wildlife protection officer for the State of Alaska for 20 years, I feel I am qualified to speak on the issue at hand.

You have my statement there, and I wish that it would go into the record.

Senator MURKOWSKI. It will go into the record, as if read, in its entirety.

[The prepared statement follows:]

PREPARED STATEMENT OF FRANK W. SHARP, CITY COUNCILMAN, CITY OF ANGOON, AK

Admiralty Island has long been called "the jewel of the southeast"—one of a group of three islands in northern southeast Alaska known as the A, B, C's (Admiralty, Baranof, Chichagof). Admiralty has long been singled out as the one island that should be protected from development because of its unique wilderness beauty. Other than a very few seasonal incursions by salmon canneries, small mining and logging operations, Admiralty Island has as a whole retained its wilderness status virtually untouched. It is today much as it was a hundred years ago—unspoiled by the ravages of over population, industrialization, or clearcut logging—unlike its two companion islands Baranof and Chichagof which are being laid bare by the lumberjacks' saw. As a result of the lack of intrusion over the years, Admiralty Island today abounds with fish and wildlife resources and wilderness beauty.

And yet, during all those years, the ancestors of the residents of Angoon roamed the shores and forests of this island, living off of its abundant natural resources, taking only what they needed to survive leaving little sign that they were ever present, never harming the resources or the environment around them. Today it is still the only permanent year-round community on Admiralty Island. Yet the Angoon Tlingits have taken good care of Admiralty Island because the Island has taken good care of them. That is the reason it is so valuable today to those who only see it as dollars in their pockets, just as all the rest have that have come and gone over the years.

Angoon people are committed to Admiralty Island. They have proved that time and time again. They proved it again when they elected not to engage in logging on Admiralty Island, instead selecting timberlands off the island. They have been severely criticized for being two-faced for not wanting to log on their island, but wanting to log on someone's else's island. But instead of criticism for their choice of selecting timberlands off-island, they instead should receive praise. They were insuring increased future profitability for their stockholders by obtaining increased acreage and better timber values than they would have from selecting on Admiralty Island. Second they were practicing good environmental management by selecting timberlands in an area where logging has and is being conducted by a number of village and private corporations. Those lands selected by Kootznoowoo on Prince of Wales Island were not taken from lands available to the local village corporations, but were timberlands that would have been offered for sale for cutting by the Forest Service to the highest bidder.

By their action in selecting off-island, Kootznoowoo increased stockholder employment assets and insured protection of the subsistence way of life of the villagers on Admiralty Island.

That was until Shee Atika obtained its selection on Admiralty Island— an act which defies explanation. Only by luck had they even been allowed under ANILCA to become an urban corporation and eligible to select lands. Shee Atika could have selected from a total land area exceeding 4,000 square miles (containing more than 1.5 million acres of productive commercial forest land exceeding 25 MBF/acre), without selecting on Admiralty Island. But where did they go? To Hood Bay on Admiralty Island in Angoon's backyard. When Angoon complained, they changed their selection to Chiak Bay on Admiralty Island, still in Angoon's backyard. When Angoon complained again (legally), they selected Cube Cove on Admiralty Island, still in Angoon's backyard. But this time Angoon's complaints went unheard. The Department of the Interior transferred those lands to Shee Atika Corporation—the only commercial clearcut logging area within the Admiralty Island National Monument. A strange decision for the government to make in a Monument situation.

From the beginning, the City of Angoon has opposed both Shee Atika's (Sitka) and Goldbelt's (Juneau) land selections on Admiralty Island, primarily due to the effect that those operations would have on the competition and dependency of its residents for the fish and wildlife resources of the area and the Island.

Legal actions by the City of Angoon and Kootznoowoo finally led to Goldbelt Corporation selecting lands off-island of greater value, and Goldbelt is now in the process of cutting their timber.

Shee Atika, however, though offered the same options as Goldbelt, continually refused to move, even though such actions would have benefited their stockholders. And thus we are here today. And we will not stop here if rebuffed again. We still believe in the principle of right over wrong. Though small in numbers, we, like David, will slay the Goliath.

In the days of the warrior clans, Shee Atika would not have dared to camp on our lands, for they knew the boundaries that had been established, and the results of trespass. They would have been captured and taken as slaves for our people. But now we are civilized so we must use the legal means provided by the laws of the land, and we will do that until all avenues are exhausted.

Angoon is a village of approximately 562 individuals, primarily Tlingit Indians. The economy is based mostly on commercial fishing, federal and state projects and programs, state revenue sharing, city jobs, and a local, privately-owned store and lodge.

Employment is highly fluctuating and depends on what projects can be obtained from federal or state funding. Some years there are many jobs; other years there are few or none. Even in the best of times, few of the villagers will make a decent living from such projects. In order to spread the jobs to a greater number of residents, new people are put on each week or every two weeks, replacing those who have already worked. If you're lucky, it may come back around to you again if the funds last.

Permanent jobs are few, maybe a couple of dozen totally. That leaves what you can make from fishing during the summer (June to September). Under Alaska's Limited Entry Law a commercial fishing permit costs $5,000. This has left a lot of residents without permits, and poor salmon runs have caused the ADFG to declare many closed periods in the summer. Consequently, the opportunity to make money by fishing is small. The cost of vessels, gear, vessel maintenance, and fuel precludes large profits. Fishing halibut is the most profitable, but the season lasts only five days each year. Everything costs more in the village. For example, the T&H electric rate is over 40 cents a kilowatt hour, making it expensive to maintain your home and family.

These factors mandate that to exist you must live off of the land; and fortunately, those resources—fish, deer, ducks, clams, crabs, kelps, herring, sea urchins, gumboots, and others abound along the shores. All you need is to have the means to get them and know how to prepare them so that you will have them throughout the seasons.

That's where the village elders have been important to the younger generations. They have passed on not only the history of their people, but also the methods they used to take and prepared foods—what type of plants and berries to take for food and medicine, passing on their cultural heritage.

In the past, Angoon residents have always had these natural resources at hand with virtually no competition. But now, if Shee Atika does develop their properties at Cube Cove, not only will there be environmental damage to the lands and resources of the area, but there will be competition for the fish and wildlife resources—a factor which will ultimately destroy Angoon's way of life and ability to survive. This would require greater dependency on the federal and state governments to supplement the loss of those resources.

Don't be fooled by Shee Atika's statements that Cube Cove is so far away that it will not affect Angoon's subsistence lifestyle. Look at the statements of the villagers that say that they frequently use that area for subsistence uses. It takes about one hour to go from Angoon to Cube Cove. Angoon residents have little income and depend on the fish and game they take to survive. These "new" residents, the workers for Shee Atika, will be well-paid and able to purchase the best equipment—boats, motors, guns, and fishing gear to utilize during their off-hours recreational and sport-taking of fish and game. In a place like Cube Cove, there is little else to do when not working. The area between Cube Cove and Angoon is the most productive area, the area to the north being more heavily utilized by Juneau residents and soon by employees of Noranda Mining Company at Hawk Inlet. The tendency will be to head south and head on with Angoon subsistence users. Not only will subsistence users be affected, but commercial fishing conflicts will also occur since in most probability these affluent "new neighbors" will have or will purchase commercial salmon troll permits in order to sell extra fish, therefore, again, competing with Angoon residents' ability to survive.

Angoon cannot survive this invasion. Presently the average gross income in the village is less than $7500 a year, well below the poverty level. The only way for them to survive is to supplement their meager income by harvesting traditional foods from the land and wood for fires. Already competition from outside communities is affecting the ability of the villagers to harvest those resources.

Basically the last bastion of untouched wilderness is southeast Alaska. They come from Ketchikan, Wrangell, Petersburg, Juneau, and Sitka where, due to population increases and long-term clearcut logging, their fish and game resources have dwindled, making it difficult to be successful. For example, prior to major logging taking place on Mitkof Island (Petersburg) in 1968-69 deer populations were extremely high. Everyone got their deer. By 1970-71, it was difficult to find a deer, and since that time, the bag limit was reduced from 4 deer to 1 deer. Still the deer population has not increased. This is also true of all the areas where clearcut logging has taken place.

The mostly pro-logging residents of these areas (and justifiably so, since their livelihood depends on logging) blame the decline of game resources on increased wolf populations. In this I would agree with them—the cause is timber wolves—the logging companies—who cut down the trees so quickly that a 20-year Forest Service timber sale is completed in as short as 7 years, and then they demand more timber to feed on (as in Rodman Bay). And the Forest Service, seemingly subservient to the powerful logging industry, provides more timber at an unbelievably low price—presently $1.70 to $3.00 per thousand board foot—virtually giving away the public's resource. And as government studies show, at a very great cost to the government.

The land transfer to Shee Atika on Admiralty seems another giveaway to timber interests.

Environmentally, clearcut logging in southeast has proven to be detrimental to fish and wildlife resources. Increased blow down due to lack of adequate leave strips, excessive erosion due to logging on steep mountainsides, loss of habitat to game/waterfowl, intrusion of marshlands, water pollution, effects on waters important to anadromous fish streams, siltation, road construction, and falling of trees in salmon streams, and many other factors document what logging itself does to an area.

For example, a recent joint study by the Alaska Department of Fish and Game and the U.S. Forest Service shows that at the present rate of cut in 15-25 years the Sitka Black-Tailed Deer could be totally wiped out in the southeastern portion of Alaska—this does not include the timber cuts on private lands (native corporations) which last year was in excess of 200,000,000 board feet, totalling 685,000,000 board feet to be cut in southeast Alaska alone.

The facts are there if they are truthfully viewed. As practiced, clearcut logging is detrimental to the lands and to the fish and wildlife resources in southeastern Alaska. We must stop the continued rape of these great resources. Balance of trade agreements with foreign nations must not lead us to the annihilation of the resources or our people. There is enough timber for all if wisely utilized.

You can save Admiralty Island from the fate of the surrounding areas. You can save the lifestyle and virtually the lives of the Angoon people and still satisfy the needs of Shee Atika by providing equal or greater land and timber values to this corporation off of Admiralty Island. All Americans will benefit from this action. Admiralty Island will continue to provide for its people who have not harmed it after thousands of years of habitation. Others who enjoy the use of it or simply enjoy knowing that somewhere there is a place so beautiful, so pure and abundant in natural resources that one can provide all of his needs from this land, as it was from the beginning of time.

The 462 residents of Angoon ask that you carefully weigh the facts as you review them and strongly consider their concerns before making your decisions.

Their very lives and continuation of their cultural heritage is in your hands.

Shee Atika must follow all of the legal provisions under the laws. No exemptions should be given either politically or environmentally. The people place their trust in their elected officials and in the judicial system of this great country.

Mr. **Sharp**. Thank you.

Mr. Chairman, as I was sitting here I was really amazed, in listening to the testimony that has been given so far. I was wondering who is really the damaged party. Is it Shee Atika, the Sierra Club, or Angoon? In all the testimony that has been given up to this point, never once was Angoon's part of it given. It was strictly, "The Sierra Club are bad guys." You know, personally I have never met a Sierra Club member. Even the person I have associated with the last couple of days tells me he is not an active member. I can tell you that I am not being manipulated.

In my 20 years as a fish and wildlife protection officer for the State of Alaska, I have had a lot of activity around logging. I have participated in several citations of logging companies for damaging the environment, and not once during those 20 years, not once—and I swear this on the Bible—has the Forest Service ever told us of a case prior to us finding it out ourselves. I mean, we would go into a camp when there were resident Forest Service people in the camp and we would find major violations: hundreds of logs fallen across streams; bridges improperly built; oil and cables, everything, laying around in the area.

Not once did the Forest Service ever turn in a case, and when you went to talk to the supervisor—and one of those supervisors happened to be a Mr. Dick Wilson—you would say, "Why is it? Your guys are all empowered to enforce the regulations." He would say, "Well, we cannot do that. Our resident engineer would not be able to live in the camp. He would not be able to play pinochle, or his wife would be ostracized. We cannot do that."

Therefore, what I am saying is that the Forest Service has not been a good manager of your forests. They are giving away your forests right now. They are selling that timber up there for from $1.70 a board foot to $3.00 a board foot. That is actually giving away the public resource. Besides that, there is a report by the

Government which shows that in previous years they have lost $69 million in managing it and are going to lose $129 million in the next phase, so we are actually giving this timber away.

Senator MURKOWSKI. Please summarize the remainder of your remarks.

Mr. SHARP. Yes, sir. I just wanted to say that a little while ago I heard laughter in here when it came around to some of the subject that was talked about, and I can tell you this is not a laughing matter.

Senator MURKOWSKI. Would you please be seated and address your attention to the Chair, and summarize your remaining remarks.

Mr. SHARP. Excuse me, Mr. Chairman.

Senator MURKOWSKI. The purpose of this testimony is to take statements from the witnesses. You have already confronted the Chair in the sense that you are testifying for two people, and I was not aware of that, so I am asking you to go ahead and summarize your remaining personal testimony.

Mr. SHARP. Yes, sir, I apologize, Mr. Chairman. I have never been to a hearing before.

Senator MURKOWSKI. That is quite all right. No problem. I just want you to get to the point.

Mr. SHARP. I am just saying that it appears to me the last few minutes in this committee meeting that it is a whitewash, that it is a fix. The committee itself is coming out and giving testimony, saying what the Sierra Club is doing and all this, and they are not considering the 562 people that live in Angoon on almost a poverty level, who depend on those resources. I swear to you they depend on those every day, every day, so when you are making your decisions, do not do it on just a monetary basis because monetarily it can be proved that Shee Atika has used bad business practices. They are losing on their hotel and they are going to lose on their timber. Just remember these people you are dealing with. You had a little map here a little while ago and it showed where they had their selection. It did not show those 562 people that feed their faces there. That beach along there is their grocery store, just like you have your grocery store here in town.

I thank you, Mr. Chairman.

Senator MURKOWSKI. Thank you.

The next witness is Mr. Bolima.

STATEMENT OF STERLING BOLIMA, PRESIDENT, KANALKU TIMBER MANAGEMENT CORP.

Mr. BOLIMA. Thank you. I would just like to make a couple of points here. I do not have a prepared statement.

Under section 506 of the Alaska National Interest Lands Act, the land that Shee Atika has on Admiralty Island was transferred to them under paragraph (b)(1), subject to valid existing rights. One of these valid existing rights is found in the same paragraph, and it is 506(a)(2). It says:

> Nothing in this section shall affect the continuation of the opportunity for subsistance uses by residents of Admiralty Island consistent with Title 8 of this Act.

In section 810 of the same act—I will just read it, section 810(a):

> In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands, or his designee, shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

It goes on. This is not the only part of the lawsuit, I suppose it is in most of the lawsuits, but it should be part of the EIS program and it should be part of the action that any Secretary or his designee takes concerning the land surrounding Angoon. The people there depend on the land for subsistence, and this law was written to protect them.

The Secretary, when he transferred the lands to Shee Atika—they were not conveyed by Congress, they were conveyed by the Secretary—did not take into account——

Senator MURKOWSKI. I think that the point, though, is that they were conveyed at the dictate of Congress to the Secretary, and the Secretary had no other choice but to grant them. Proceed.

Mr. BOLIMA. The Secretary had some discretion there. He had discretion to protect the valid existing rights of the Angoon residents, for instance, and he did not, and the people are upset with that.

The EIS that the Corps of Engineers talked about, which they produced to issue the log dump permit in the first place, did not take into account the subsistence needs of the people of Angoon. Other actions have been taken that do not take into account the subsistence needs of the people of Angoon. I think the law is clear on it, and I think it will stand up in court. Congress wrote it.

Senator MURKOWSKI. Do you have any further statement?

Mr. BOLIMA. No.

Senator MURKOWSKI. Thank you very much.

The next witness is Mr. Glen Feldman. Mr. Feldman, we welcome you to the witness table and look forward to your testimony.

STATEMENT OF GLENN M. FELDMAN, ESQ., ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT, REPRESENTING KOOTZNOOWOO, INC.

Mr. FELDMAN. Mr. Chairman, I have no prepared statement. I would simply like to make several very brief comments, following up on the testimony of these witnesses. I think they can present their case far better than I can.

Senator MURKOWSKI. Please do.

Mr. FELDMAN. I think a couple of points need to be made. We have heard a great deal here today about Congress having acted in certain ways over the years. It has been suggested, I think, that these issues are cut and dried, that there is simply one way to look at what Congress has done, and that the parties who have challenged these actions in court are acting maliciously or in a manner designed to harm Shee Atika.

I would suggest that that is not the case; that what Congress has done has not been as clearcut as other witnesses have suggested. As Mr. Bolima indicated, while it is absolutely clear that Shee Atika's land entitlements are congressionally mandated under Section 506[c], it is equally clear that in section 506(a)(2), Congress intended to preserve the continued subsistence rights of the residents of Angoon.

Therefore, while Congress may have been giving Shee Atika those lands, at the same time they were directing that the subsistence rights of the people of Angoon, the residents of that island, must be protected. The litigation in which the people of Angoon are participants is designed solely to protect those subsistence rights.

Senator MURKOWSKI. Who has the power to enforce subsistence rights under your opinion of what the law says? Whose responsibility is that, currently?

Mr. FELDMAN. The Secretary who made the conveyance.

Senator MURKOWSKI. To what agency does he dictate that? The U.S. Fish and Wildlife Service? The State of Alaska Department of Fish and Game, which manages the subsistence on Admiralty Island?

Mr. FELDMAN. No. I think our point is that certain restrictions——

Senator MURKOWSKI. No, I know what your point is but I am interested in knowing what is your interpretation of the responsible management agency for subsistence.

Mr. FELDMAN. I would defer to these gentlemen under State law, if that is what you are talking about. Under Federal law—we are suggesting that the Secretary of the Interior should have included those restrictions in his conveyance.

Senator MURKOWSKI. As you will recall, we had an election in Alaska on the subsistence issue, which did not resolve it. It left it very much up in the air, and the point is that there is a subsistence responsibility, certainly. My question to you is who, in your opinion, has the responsibility of carrying that out? I gather you do not have an opinion.

Mr. FELDMAN. I have no opinion on that.

Senator MURKOWSKI. Are you familiar with the——

Mr. FELDMAN. No, I am not.

Senator MURKOWSKI. OK.

Mr. BOLIMA. Senator Murkowski, we do not know either. When you find out, could you tell us?

Senator MURKOWSKI. Yes. It is the State Department of Fish and Game.

Mr. SHARP. Mr. Chairman.

Senator MURKOWSKI. Yes.

Mr. SHARP. That is not so. It is the State Fish and Wildlife Protection, which is under the Alaska State troopers.

Senator MURKOWSKI. That is deputized under the Alaska Department of Fish and Game, but you can check that out very easily. Please proceed.

Mr. FELDMAN. The second point that I think needs to be addressed is what Congress did in December of last year. Again, there have been suggestions that Congress took certain actions and that these lawsuits are being filed in direct violation of what Congress has mandated. Again, it is not that clear, and I think that reasonable people ought to be able to differ on this.

Let me read to you what Chairman Yates, the chairman of the House Interior Appropriations Subcommittee and the chairman of the House conferees, had to say about what Congress did in December of last year. From a procedural point of view, you should know that the Senate adopted a rider to its Interior appropriations bill. That rider was amended in conference, and it was Congressman Yates' amendment that was adopted by the conferees.

Congressman Yates had this to say in the Congressional Record following that action. He said:

> The purpose of the conference amendment to the Senate provision was to make it clear that Congress was not relieving the Secretary of any of his statutory responsibilities under ANCSA or ANILCA. If the Secretary has failed to take some action or impose some restrictions which is required under either of these statutes, that is for the court to determine. Certainly the House conferees did not intend to preclude judicial review of these matters, nor did the conferees determine the merits of pending or future litigation. Any suggestion to the contrary is erroneous.

That is from the Congressional Record of April 14, 1983, page E1590.

It is apparent that Congressman Yates' interpretation of this amendment is considerably different than that expressed by Senator Stevens earlier. My point is simply this: people of good will can differ on these things, and litigation is often designed to resolve those kinds of differing interpretations. I would not want the committee to go away from this hearing feeling that what is being done here is being done as a matter of spite or to harm Shee Atika. The people who are before you are fighting to protect a way of life that they have relied on for many years and, as they have indicated, they will continue to fight for that way of life and they will do it in any form that is available to them.

I would like to finish with this point: We have only skirted the edges of the real question that is before the committee today. The real question in my view is whether Shee Atika is entitled to some kind of preferential treatment from this committee? Ought it be relieved of the responsibilities under various Federal laws that would apply to other people similarly situated?

I think the answer to that is no, for two reasons. No. 1, the Federal witnesses who have appeared here before you today have made it extremely clear, I think, that they intend to expedite in every way possible the processing of the various permits and studies that are required here. You have gotten some firm commitments and I think it is clear nobody could hear what they had to say without recognizing that they intend to move this through as quickly as humanly possible.

Second, and even more important, is the fact that the risk factor here is too great. For this committee to waive these normal Federal requirements, when the possible harm to the people of Angoon is so great, is simply not warranted under the record that is before this committee right now. There is simply no room for error in a decision of that kind.

Mr. Kaczynski indicates that he does not believe that there will be any harm to the subsistence activities of the people of Angoon by the proposed activities at Cube Cove. He may be right. On the other hand, however, he might be wrong. If the studies are necessary to make that determination, and if the likestyle and the culture that these poeple have hung onto for all these years is at stake, I think the committee would be acting precipitously and unwisely in waiving those requirements on the basis of the record presented at this hearing.

Thank you very much.

[The following correspondence was received for the record:]

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PLEASE REPLY TO
WASHINGTON, D.C. OFFICE

October 20, 1983

Jerry Reichlin
Office of Senator Frank Murkowski
317 Hart Senate Office Building
Washington, D.C. 20510

Dear Jerry:

As promised, I am enclosing some material that may be helpful to you in seeing both sides of the issues to be addressed at the Shee Atika hearings on November 2nd. As you know, I represent Kootznoowoo, Inc., the Native village corporation for Angoon, the only village on Admiralty Island. While I do not represent either the City of Angoon or the Angoon Community Association, the tribal government, the interests of all three Native entities are closely related.

First, enclosed please find a copy of Alaska Geographic Magazine devoted entirely to Admiralty Island. After you have seen what Admiralty Island is like, you will have a greater understanding of why the Tlingits of Angoon have been fighting to perserve and protect their island and their way of life. It is a battle that they have fought for hundreds of years, first against the Russians, then against the United States and now against the urban Natives of Sitka, who unfortunately value profits over the maintenance of Tlingit culture.

In order to better understand the people of Angoon, I have also enclosed copies of two affidavits by anthropologists who have extensively studied the Tlingit culture of southeast Alaska. As you will see, they have found Angoon to be the last true bastion of Tlingit culture in southeast. A central element of this culture is, of course, subsistence hunting, fishing, and gathering. It is not overstating the case to say that a threat to their subsistence activities is a direct threat to their cultural existence.

The present dispute between the Natives of Angoon and Shee Atika centers around Shee Atika's plan to harvest timber and build a log dump and transfer facility in an area known as Cube Cove. Cube Cove, approximately 35 miles north of Angoon, is an important subsistence area for the villagers. It is an area rich in fish and wildlife and is vital to the subsistence lifestyle of the Angoon people. As one of the village elders stated in an affidavit, "I have fished in Cube Cove since I was 12 years old. Going to Cube Cove is like opening a refrigerator." Dr. Tollefson states in his affidavit: "Because there is no alternative to subsistence living for Angoon. . . , [and because] Angoon is the 'final stronghold' of Tlingit culture, [the loss of] Cube Cove could very well be the last straw that could destroy the Tlingit lifestyle."

I have also enclosed some press clippings and other materials which will give you a better sense of the nature of the dispute as it has developed over the last year or so. The chief concern of the Angoon Natives has been the protection of their subsistence resources. It is our view that both the Alaska National Interest Lands Conservation Act (ANILCA) and the United States' trust responsibilities to Alaska Natives require that the United States take appropriate actions to mitigate or eliminate adverse impacts on subsistence activities resulting from Shee Atika's proposed logging operations.

At the same time, a number of environmental groups, including the Sierra Club and Wilderness Society have brought suit to ensure that these logging activities are conducted within the framework of normal federal environmental guidelines. Recognizing the potential environmental consequences of the proposed log dump in Cube Cove, the Army Corp of Engineers has determined that an environmental impact statement is required to be prepared under NEPA. We understand that it is this decision that Shee Atika wants Congress to legislatively overturn.

As you might expect, we are strongly opposed to such action. We believe that it would set a very bad precedent for Congress to wave an EIS requirement after the appropriate agency has determined that such action is necessary and appropriate. For Congress to decide, on the basis of brief oversight hearings, that the proposed action is not "a major federal action significantly affecting the quality of the environment," after a contrary finding by the Army Corp of Engineers, would lead to a major confrontation with the national environmental groups. Such action would be even more unwise in light of the potentially devastating impact on Native culture which would result from such action.

Shee Atika has been successful in the past in getting its way with Congress, particularly in securing land selections on Admiralty Island. That is not the issue today, however. Shee Atika's land entitlements are secure. The issue now is whether Shee Atika is deserving of preferential treatment; whether it ought to be exempted from the normal federal regulatory requirements that would apply to every other project of this type. We believe that the answer to this question is an emphatic "no." Moreover, we believe that Congress need not feel that it must support Shee Atika in this instance because it has supported it in the past. Quite simply, what Shee Atika is seeking this time goes beyond the bounds of reasonableness. This is particularly so given the obvious negative consequences for the Natives of Angoon, and the alternatives which exist for Shee Atika.

Finally, let me address one related issue. The representatives of Shee Atika have indicated that without Congress' assistance in this matter they will go bankrupt. You should know that Shee Atika has said this same thing every time they have come to Congress seeking assistance over the past seven years. We do not know what Shee Atika's actual financial status is. We do know, however, that if it is experiencing financial difficulties, much of the blame can be attributed to an ill conceived and poorly managed hotel venture in Sitka. We believe that it would be appropriate for the Committee to inquire into the relationship between this hotel investment and Shee Atika's financial situation before assuming the corporation's financial difficulties have been caused by its inability to harvest timber. This is particularly true in light of the greatly depressed timber market over the past several years.

I hope that this information and the enclosed materials are of some help in demonstrating to you that there are, in fact, two sides to this issue and that Native interests will be severely harmed if Shee Atika is successful in securing the preferential treatment that it seeks. If you have any questions, or if I can provide additional information, please be sure to let me know.

Sincerely yours,

ZIONTZ, PIRTLE, MORISSET
ERNSTOFF & CHESTNUT

Glenn M. Feldman

Senator MURKOWSKI. Have you had an opportunity to view Cube Cove?

Mr. FELDMAN. I never have, no.

Senator MURKOWSKI. Are you retained by the city of Angoon?

Mr. FELDMAN. No. I represent Kootznoowoo, Inc., the village corporation. I do not represent either Angoon or the timber management company.

Senator MURKOWSKI. Mr. Sharp, it would be appreciated for the record if in your testimony, particularly that portion where you alleged that you had been involved in specific instances where citations were issued for logging violations, if you happen to recall those specifics of what logging company and roughly when and care to provide that for the record, we would appreciate that.

Mr. SHARP. Mr. Chairman, you know, I did not look at the records recently. I retired last year from Fish and Wildlife, and——

Senator MURKOWSKI. What you know from your memory would be appreciated.

Mr. SHARP. Thorn Bay, about 1971, somewhere in there; Mud Bay near Sitka, In——

Senator MURKOWSKI. Give us the specifics of what the violations were.

Mr. SHARP. Logs in streams, interference with salmon spawning streams.

Senator MURKOWSKI. Whatever detail you could provide would be appreciated.

As a matter of observation, previous testimony indicated that there was approximately 1 million acres of land associated with the land mass of Admiralty Island, and it is my understanding that Congress in its dictate and the Secretary in the processing, awarded 23,000 acres to the Shee Atika group. I am not going to sit here and ask what is reasonable or unreasonable as far as the ratio. That is something that I am sure will be disputed at great length and for an extended period of time.

However, to attempt to draw the conclusion that 23,000 acres will necessarily decimate the subsistence on Angoon, when Angoon traditionally has seen an extended history of small logging operations off and on for some 130 years, one must consider the size of the island and the realities associated with the subsistence needs of Angoon. I concur with your feeling that subsistence use is a basic right that needs to be defended and supported. Therefore, we are not going to resolve that today.

I have one other question: Since testimony was brought out by the witnesses with regard to the association of the Sierra Club, could you provide for the record what financial assistance the Sierra Club has contributed to this particular cause, either through the city of Angoon or Kootznoowoo, Inc., in this regard?

Mr. BOLIMA. Yes, sir, we will.

Senator MURKOWSKI. Thank you. In addition, any in-kind contributions would be appreciated, too, because I think it is relevant to the extent of the interest of the Sierra Club and any other particular groups that feel inclined to oppose this.

[Subsequent to the hearing the following correspondence was received for the record:]

CITY OF ANGOON,
Angoon, AK, November 10, 1983.

Senator FRANK MURKOWSKI,
U.S. Senate,
Washington, DC.
Attention: Jerry Reichlin.

DEAR SENATOR MURKOWSKI: At the hearing for Shee Atika on November 2, 1983, the City of Angoon was asked to respond to the question as to whether we have received any contributions from the Sierra Club. The simple answer is no. We have not received any money or in-kind services from the Sierra Club. We have not received any money from the Sierra Club Legal Defense Fund. It is hard to measure in-kind services from the Legal Defense Fund as we are often working on the same litigation and at times we share costs. I will assure you that any in-kind services that we may have received from them are negligible.

I hope that this answers the question to your satisfaction. We will be pleased to respond further if necessary.

Best regards.

Sincerely,

EDWARD J. GAMBLE, SR.,
Mayor.

Senator MURKOWSKI. Do you have any historic recollection of the history of logging on Admiralty Island?

Mr. BOLIMA. Senator Murkowski, that subject keeps coming up, and it is generally stated that there were 135 clearcuts on Admiralty Island going back to the turn of the century. These 135 clearcuts were mainly for cannery pilings, fish traps, or whatever.

There has been some logging on Admiralty Island, some large-scale logging. It was all stopped. It was stopped by lawsuits. A lot of it was stopped by people going bankrupt. The possibility is, I guess, that the Spear River contract could have been saved, because they went bankrupt logging on Admiralty Island, and they could have been saved by coming to Congress or something.

Senator MURKOWSKI. Therefore, the statement that the island has been logged for some 130 years then, you think, is true of relatively small operations that had no real effect on the subsistence aspects associated with the——

Mr. BOLIMA. That is true. There was a bid clearcut on the other side of the island that did not have any consequence on the subsistence aspects.

Senator MURKOWSKI. It is my understanding that the Cube Cove area is about 30 miles from Angoon. Is that right?

Mr. BOLIMA. That is right.

Senator MURKOWSKI. There are active salmon-spawning streams in Silver Bay and there are not in Cube Cove. Do you still contend that the basic danger of loss of subsistence livelihood is very real with regard to Cube Cove?

Mr. BOLIMA. Yes, we do. Shee Atika, I suppose, has submitted a large report on their study of Cube Cove. We also sent in some supporting documents on our study, the city's study of Cube Cove, and they are at odds with each other, naturally.

Senator MURKOWSKI. I am not surprised.

Mr. SHARP. Mr. Chairman?

Senator MURKOWSKI. Yes?

Mr. SHARP. May I speak to that, please? We are not only talking about salmon. Salmon was mentioned, but if you go into Silver Bay now you are not going to be eating herring spawned on kelp. There are shellfish all around on the beach and everything, because of the pollutants that have come out of the mill. The water is brown, you know.

Senator **Murkowski**. Where is the fishery, the herring fishery that occurs in Sitka?

Mr. **Sharp**. They did, Mr. Chairman. They did occur in Silver Bay but they do not occur there now.

Senator **Murkowski**. Where do they occur now, in Sitka?

Mr. **Sharp**. Further out in the sound, out in the middle island group, offshore, in there.

Senator **Murkowski**. Well, are there any other comments that you care to make?

Mr. Gamble?

Mr. **Gamble**. Mr. Chairman, one other point I think I need to make is that all land conveyance was held up for months while we negotiated with a private landowner in our area, and our Corps of Engineers permit took a year. We had to study alternative sites twice, and we had to relocate the log transfer facility once. We also had to change the layout twice. We also ended up hiring a consulting firm, of which one of the partners, by the way, was a Shee Atika shareholder, to dive in the bay for a week and prepare a report. We did not feel that this was necessary, since there was already a log dump site there, but because the law required it we went ahead and did that.

Senator **Murkowski**. However, you did not have the same type of a requirement to do an environmental impact study in association with your log dump.

Mr. **Gamble**. No, sir. We are not located adjacent to a national monument.

Senator **Murkowski**. Have you begun timber operations on Prince of Wales Island?

Mr. **Bolima**. Yes, we have.

Senator **Murkowski**. What is the anticipated value of that timber that will be produced off those lands?

Mr. **Bolima**. We have 7,000 acres down there. We still have not received conveyance to 14,00 acres.

Senator **Murkowski**. Therefore, you have some 23,000 or 24,000 acres in all.

Mr. **Bolima**. Yes, sir. We have only received conveyance to parts of it.

Senator **Murkowski**. Where is your log dump located?

Mr. **Bolima**. It is in Dalmai Bay.

Senator **Murkowski**. Is there a salmon-spawning stream in that bay?

Mr. **Bolima**. Yes, there is.

Senator **Murkowski**. In your opinion, is that log dump going to be detrimental to the spawning?

Mr. **Bolima**. No; we moved the log dump away from the salmon-spawning stream, brought it to the other side of the bay, and moved most of it up on land except for a small part that we left in the water.

Senator **Murkowski**. Are there any indigenous people that use that area, the Natives of the Prince of Wales Island, that would subscribe to the conclusion that their subsistence rights were damaged by having a log dump in that area?

Mr. **Bolima**. We have talked to all of the corporations down there as representatives of their people and we have not gotten any bad feedback, or any feedback on that at all.

Senator **Murkowski**. I guess my question is, why should these requirements apply to Cube Cove where there is not a salmon-spawning stream, but not necessarily apply down where you are logging and where you have your log dump? There is a salmon-spawning stream in the same bay, and there is virtually the same marine life. We are all familiar with the coastline of Prince of Wales as well as Admiralty Island.

Mr. **Bolima**. In Dalmai Bay, early in this century there was a town of 600 people there. In the salmon-spawning stream itself there is railroad track from another development. When we applied for a log dump permit, there was already logging going on and there was a log dump right there in that same spot. I do not know how they gave these other guys a permit but they sure asked us a lot more questions.

Senator **Murkowski**. That is kind of a sign of the times, asking a lot more questions.

Mr. **Gamble**. Mr. Chairman, to answer that question, the concerns of the people of Angoon are not only the salmon that migrate through the Cube Cove area but also the other subsistence values of the area, that include the gathering of crab and mussels and also deer.

Senator **Murkowski**. I appreciate and understand that, Mr. Gamble, but it would seem to me that the same requirements should apply on Prince of Wales Island because you have virtually the same marine life, and you have something down there that does basically the same thing. Obviously, it is going to have an effect upon the subsistence lifestyle of the people that live on Prince of Wales Island, and there are several villages; Craig, Klawock, Hydaburg.

Obviously, we can discuss the merits of this at great length but the realities are that any time you put anything in the water it is going to have some effect. The question is, will the log dump at Cube Cove have a substantially detrimental effect on your subsistence lifestyle keeping in mind the acreage that you have, which is over 1,000,000 acres, and the request for 23,000 acres which would probably take 4 or 5 years to log.

Mr. **Bolima**. The answer to your question about subsistence in Dalmai and will it have effect on subsistence hunting and fishing down there, the answer is no. It will not have an effect on subsistence hunting and fishing in Dalmai.

Senator **Murkowski**. Why?

Mr. **Bolima**. The area is rarely used for subsistence hunting and fishing. It has been logged. There is a log dump, been there for many years. It is the site of an old town. There is some young growth timber there, second growth timber, that does not support very much in the way of deer, and——

Senator **Murkowski**. There are wolves on the island, too, and there are no wolves on Admiralty. It has something to do with the deer survival.

Mr. FELDMAN. Mr. Chairman, in answer to your latter question, will the facility at Cube Cove have an impact on the people of Angoon, the answer to that is we will know when the EIS is completed. That is precisely why the EIS is being done.

Senator MURKOWSKI. We will have an idea.

Mr. SHARP. Mr. Chairman, if I may, I am fairly familiar with the Dalmai Cove area. I was stationed in Ketchikan 5 years as fish and wildlife protection counselor, and I have been in every bay, cove, and inlet in southeast Alaska. Since that had been logged many years before and the requirements for logging were not strict like they are now, that stream was almost totally wiped out. It was a sockeye stream, and I believe if you wanted to subsistence there, or Craig, tomorrow, when the fish were there you could not because Fish and Game would not give you a permit because the runs there will not——

Senator MURKOWSKI. Has that been open to seining in the last few years?

Mr. SHARP. Not in Dalmai Bay itself.

Senator MURKOWSKI. Outside the bay?

Mr. SHARP. I think the main bay is Johnson Bay, the main bay; maybe some in Johnson but not in Dalmai. Dalmai is just a really small little place.

Senator MURKOWSKI. Dalmai started out as a mining operation.

Mr. SHARP. Yes, sir. There is an old mine there.

Senator MURKOWSKI. It is pretty hard to find.

Mr. SHARP. Yes, sir. Thank you.

Senator MURKOWSKI. OK. I think that concludes the panel.

We will continue the hearing tomorrow at 9 o'clock. Now this will be in a new room, Dirksen 138. We will start promptly at 9 o'clock. We will recess the hearing until tomorrow at 9 a.m. Thank you very much.

[Whereupon, at 5:10 p.m., the hearing recessed, to reconvene at 9 a.m., on Thursday, November 3, 1983, in room 138, Dirksen Senate Office Building.]

SHEE ATIKA, INC.

NOVEMBER 3, 1983

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to recess, at 9:15 a.m., in room 138, Dirksen Senate Office Building, Hon. Frank H. Murkowski (acting chairman of the committee) presiding.

Present: Senator Murkowski.

Staff present: Paul Alexander, staff director; Jerry Reichlin, legislative assistant; Gertrude Wilson, secretary; and Elva Arquero, chief clerk.

Senator MURKOWSKI. Good morning. This is a continuation of the oversight hearing of the Senate Select Committee on Indian Affairs, in its second day of testimony on the issue of Shee Atika, Inc.

Several threads emerged during the testimony yesterday. One, is the evidence that the people of Angoon are proud protectors of their traditional native culture. They have used Admiralty Island since time immemorial and continue to this day to live close to and off of the land. It has been agreed that during the past, portions of the island have been logged, but it is evident that the people of Angoon have been able to pursue their subsistence activities throughout these periods of infrequent logging.

However, this is really not new ground. Congress has gotten to this point several times in the past, and there is no doubt that Congress is aware of this history. Several of the witnesses who testified yesterday have been before Congress not just once, but many times, making many of the same points. Congress recognized the importance of subsistence to the natives of Angoon and specifically guaranteed them the right to continue to pursue subsistence activities.

However, within the same section of the bill Congress also granted the shareholders of Shee Atika 23,000 acres on Admiralty Island, and at the same time the island was set up substantially as a national monument. It was really not a case of selecting in a national monument; it was a case of a simultaneous act by Congress. The people of Shee Atika have a right to make their selection, as opposed to the idea that they were selecting in a monument.

There is no doubt of our intention as a Congress to proceed in this matter because less than a year ago this matter was before us. Does this issue come down to what Congress' rights are in the matter? Congress has always had the courts to determine its rights. The rights of Congress are the rights of the American people and this sovereign Nation: they cannot and should not be rushed.

In the case of Shee Atika, which is a creature of Congress, the situation is not quite the same. As I have indicated, time is an element. The short-term drains of litigation, the cost of inactivity, threaten to overtake the slow pace of the courts struggling to determine their rights, and that is the dilemma that faces us.

I am looking forward to today's testimony because we will hear from two key parties that may be able to develop or help resolve the short- and long-term problem of the people bearing the true burdens of this controversy, people of the same families, of the same names, that because of the white man's law have developed discord. I hope that out of this hearing there will be shed some light on how to resolve this issue in an atmosphere of peace and tranquility which will return these people back to their traditional relationships.

Our first witness today is a representative of the Sierra Club Legal Defense Fund, Mr. Jim Howard. Mr. Howard, would you please come before the witness table, be seated, and proceed with your statement? I welcome you before the committee this morning.

STATEMENT OF JIM HOWARD, REPRESENTING THE SIERRA CLUB LEGAL DEFENSE FUND

Mr. **Howard**. I would like to first say that I enjoyed your opening comments, and hope that we can resolve this issue without the kind of bickering that has been going on, that is counterproductive to what we are here today to discuss.

I have a statement here from Mr. Durwood Zaelke, who is the lead attorney for the Sierra Club Legal Defense Fund and these matters. He is unfortunately sick today and cannot attend these hearings, so I would like to read his statement into the record.

Senator **Murkowski**. Please proceed.

Mr. **Howard** [reading]:

Prepared Statement of Durwood Zaelke, Attorney for the Sierra Club Legal Defense Fund

My name is Durwood Zaelke. I am an attorney with the Sierra Club Legal Defense Fund. Thank you for this opportunity to testify today and begin setting the record straight. The Sierra Club has taken a lot of abuse during these hearings, all of it unfairly, I believe. But we are willing to take the abuse because we so firmly believe in our efforts to help Angoon protect its traditional subsistence culture.

Rarely in public interest environmental law does a lawyer have something so important to fight for as an aboriginal native culture such as Angoon's. Angoon has asked for our assistance, and we have pledged to provide it.

We are providing our assistance, and we will continue to provide it as long as Angoon requests it.

I suggest that the majority of the American public, and indeed, even the members of this committee, would do exactly as the Sierra Club is doing if they knew the fineness and nobility of the Angoon natives. If they knew how strong and successful the traditional subsistence culture is, they would fight just as vigorously to preserve it as the Sierra Club is doing.

"I would like to quote briefly from a letter written by the Mayor of Angoon to the Corps of Engineers on the log dump EIS. It says:

"The Tlingit Indians of the Village of Angoon on Admiralty Island envy no people on earth. We have our religion, our tradition, and our island. We ask for nothing more, nothing less. Our subsistence hunting and fishing way of life has made our children healthy and bright and their spiritual beliefs strong. We want our life on Admiralty to continue as it has always been.

"Yet as I walk through our village, as Tlingit Indians have done throughout the ages, a sadness overwhelms me to think that our culture may soon be ended. A logging operation plans to blast 30,000 tons of rocks from the beach at Cube Cove to make a breakwater, and then to use the cove as a log dump. The logging operation also plans to clearcut 23,000 acres of our virgin forest. All of this will take place in our traditional subsistence hunting and fishing grounds.

"You told us at your meeting here June 8, 1983, that you would study the log dump and logging operation and try to find ways to keep our island and our culture from being harmed. We ask, and we hope, that you do a very careful job."

I dare say there are few Americans who could resist the pleas of the elders of Angoon, who, like the Mayor, speak so eloquently about their aboriginal subsistence culture and their sadness that it may be lost so some corporation can make a dollar. The Sierra Club is proud to help Angoon, and we will only be ashamed of our role if we fail in our effort to protect Angoon's culture.

The focus of these hearings should not be on what the Sierra Club is doing to help Angoon. No. The focus should be on what Congress and the federal government—as trustee for America's natives—should be doing to help both Angoon and Shee Atika.

The Sierra Club believes that the law protects Angoon's subsistence culture and the environment it depends upon. But if it doesn't, if ultimately the courts do not agree with us, then we say that the law must be changed. Congress should not waste its time trying to embarrass or punish the Sierra Club. Congress' role is much more noble than that. Congress should not waste its time discussing such things as the Sierra Club Legal Defense Fund fundraising letter. This is particularly inappropriate because Shee Atika has already tried this attack and lost. Shee Atika sent a complaint to the Alaska Bar Association. The Bar responded as follows:

"After thorough review of your letter and Mr. Zaelke's solicitation letter, I have concluded that your complaint rests on political views divergent from Mr. Zaelke's. While you have taken great efforts to point out that you attach different meanings to words and phrases used in the letter, there appears to be no evidence of fraud or misrepresentation in the materials you supplied to me. As I am sure you realize, Mr. Zaelke enjoys the same First Amendment freedom of expression rights as you or I or any other citizen of this country."

I will comment only briefly on the litigation, because I was told Shee Atika was winning. On the contrary, I think Angoon and the Sierra Club are way ahead. There have been three permits litigated so far. The first is the State water quality permit for the log dump. There we have gotten significant new mitigation conditions so far, and I believe we will win a great deal more on the appeal.

Second is the log dump EIS. We won this hands down, and we are optimistic that the Corps will do a thorough job designing alternatives to avoid and mitigate any threatened harm to Angoon's subsistence culture.

Finally, there is the 402 Clean Water Act permit which we also have won. None of these legal actions was particularly novel. I believe all three permits could have been done right the first time, had the proper planning been done.

But litigation is not what we should be talking about. I submit that we should be talking about settlement, specifically the mediation that has been underway for 6 months or so. I am told that Sealaska will discuss this, especially the new settlement report. I hope the committee will consider it carefully.

I know Shee Atika has not wanted to discuss settlement or mediation. And perhaps they will feel better after blowing off some steam yesterday. But I think it detracts from what the real goal should be for Congress—the goal of finding a just settlement for all.

Before I close, I would like to add that the Sierra Club is prepared to settle this controversy along whatever lines are accpetable to Angoon. While I personally hope Angoon never compromises—because I think they are right, and because I think their culture should be saved—there may be some settlement acceptable to Angoon. And if there is, the Sierra Club will gladly join it.

Senator Murkowski, in the interest of time I submitted my testimony yesterday, and I think it speaks for itself. Rather than read it into the record, I would submit to questions now. I am sure you have some.

Senator MURKOWSKI. Thank you. The entire statement which you have submitted will be entered into the record as if read.

[The statement follows:]

Sunrise, Mt. McKinley Ansel Adams

SIERRA CLUB
LEGAL DEFENSE FUND, INC.

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November 2, 1983

Prepared
Testimony of James Howard
for the Sierra Club
Senate Select Committee on Indian Affairs
November 2, 1983

My name is James Howard. I work with the Sierra Club Legal Defense Fund, Inc. in Washington, D.C. and am here today to testify on behalf of the Sierra Club. I've worked in Alaska during the past two years on the Sierra Club's efforts to protect Admiralty Island which I was privileged to visit several times.

The Sierra Club appreciates the opportunity to testify before this Comittee. We understand that this hearing has been called to determine whether a legislative solution to the Admiralty Island controversy is necessary and wise, and if so, what the outlines of such a legislative solution might be. We have been told that no legislation has yet been proposed and that if it is, it will be done with appropriate notice to all concerned parties.

The Sierra Club has been asked by the people of Angoon to assist their efforts to protect their traditional subsistence culture and the pristine environment it depends upon. Of course the Sierra Club also has its own interest in Admiralty Island National Monument, dating back to John Muir's visit in the late 1800's. The Sierra Club remains committed to this effort. I present to the Committee the most recent issue of SIERRA magazine which includes a lead article on the efforts to protect Admiralty Island as evidence of this committment.

In discussion with the Committee's staff, a number of points have been raised which I would like to briefly address. First, however, I would like to place the controversy over Admiralty into perspective. Simply put, it is a conflict of important rights and values in search of a resolution. The last traditional native subsistence culture in Southeast seeks preservation; the national interest in Admiralty Island seeks protection; and an urban native corporation seeks economic profits. The Angoon culture has no other alternative for its survival than the continuing use of its hunting and fishing territory now threatened with destruction. The national interest values of Admiralty Island are found nowhere else. However, the corporation has many alternative ways of making money.

We firmly believe that the law protects Angoon's subsistence way of life and the unique environment it depends upon. We also firmly believe that the proper application of the law and the rights given to Angoon and the Sierra Club should be left to the courts.

Shee Atika selected lands in the middle of a national monument and in the middle of the most important subsistence territory of Angoon. Because of this, it should not be surprising that their attempted development would be keenly scrutinized and that the respective rights of the parties would often have to be decided by the courts.

Yet the courts can be cumbersome and slow. There may be a better way to resolve this dispute--a way where everybody wins--a way where Angoon's culture is preserved, where the unique environment is preserved, and where Shee Atika is able to make as much or more money as they hope to make by cutting Admiralty.

I would like to address the relationship between this hearing and the current litigations. Apparently Shee Atika has requested this hearing to try to win before Congress what they cannot win in the courts. However, this is not the appropriate forum to litigate the issues currently pending in any of the court cases, and we will not attempt to do so today. I should mention at least two specific points on which Shee Atika's lobby has apparently created some confusion.

The first item is the Alaska Department of Environmental Conservation (DEC) record. At the DEC hearing subsistence was not a consideration under the State water quality and coastal zone guidelines.

Therefore no evidence relating to subsistence uses of the Cube Cove lands and waters was admitted. Thus the DEC record is totally unreliable on this point, despite what the hearing officer's recommendation or Shee Atika may say.

More importantly, the federal government has admitted that a full EIS is required for Shee Atika's log dump at Cube Cove. This EIS, is currently being prepared, and should provide a solid factual foundation on the economic, social, and environmental impacts of the log dump in Cube Cove. It also should address the proposed timber harvest, the effects on subsistence and alternatives to the proposed harvest. We assume that this study will be adequate, and that if appropriate, this Committee will be able to rely in confidence on the EIS to design a legislative solution which benefits all the parties. As DEC Commissioner Richard A. Neve has written "the information gained there from will ultimately result in a savings of time and cost to all parties....

The Sierra Club's goals in the litigations have been questioned. The Club's goals are clear: to protect Admiralty Island from destructive and unecessary development, and to assist our friends in Angoon in their fight to preserve their subsistence culture. The question is not, as has been suggested, whether Shee Atika has property rights on Admiralty Island. The question is what bundle of rights does Shee Atika have, and how might they legally use those property rights so that their development does not impose costs on, and violate the rights of Angoon, the Sierra Club, and the American public. When the full costs of Shee Atika's proposed development are documented, we suspect that the shaky economics of Shee Atika's plans will become evident. Again, the EIS currently being prepared by the Army Corps of Engineers in partial settlement of Angoon v. Marsh should illuminate this subject.

This hearing has been called to respond to Shee Atika's claims of impending bankruptcy. It may well be that Shee Atika is in financial trouble. They bought a hotel with borrowed funds which at last count was losing about $2,000 a day, over $600,000 a year. They have selected lands for clear cutting in the middle of a National Monoment Wilderness area, where they knew that there would be opposition from mamy sides, and where they must have known that the costs associated with developing those lands would be high due to the need to protect "national interest lands" and the absence of existing timber harvesting infrastructure on adjacent lands. Even more puzzling, they have turned down lands of at least equal value lands to stay on Admiralty.

We do wonder why Shee Atika has been claiming bankruptcy for so long. We question what part bad business judgment, high interest rates, and the other this problem. The history of this problem clearly indicates that successful solutions such as those achieved with Kootznoowoo and Goldbelt, require the aquiesence of all concerned parties. Aquiesence has not been achieved through litigation or by legislative fiat.

The Sierra Club recognizes that compromise may be necessary. However, the Club is, and will remain, vigorously opposed to any proposal which threatens the environmental integrity of Admiralty Island as protected by the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, NEPA, the Clean Waters Act and other environmental laws.

The only possible action which this Committee might take that would benefit all the parties, to the detriment of none, would be to support the settlement efforts by assisting the necessary studies and seeking interim solutions to Shee Atika's cash flow problems.

We have received assurances that, per usual, the hearing record be kept open not less than two weeks. We appreciate this opportunity to place before the Committee such further evidence as might be put in issue at this hearing.

The Sierra Club stands ready to assist this Committee work towards a reasonable resolution of this matter. Thank you.

factors which may hurt any corporation play in this story.

Whatever the reasons for Shee Atika's financial problems, one thing is clear. It has little to do with the Sierra Club.

Shee Atika's focus on the Notice of lis pendens is a red herring. Shee Atika's primary purpose here is to generate anti-Sierra Club hysteria and divert attention from the questionable judgment of Shee Atika, Inc. If litigation has cost Shee Atika, it is only due to their failures in the development process. The Sierra Club has won mitigation at every stage of the litigations by applying the clear legal requirements which Shee Atika has tried to ignore.

We urge the Congress to conduct a full investigation of Shee Atika's finances, to review their business decisions, to use your investigative powers to expose their judgment and to follow up on the recent GAO study of the problems of Native Corporations.

Shee Atika has expressed its concern over the discussion before this Committee of the mediation efforts currently in progress. While the Sierra Club desires to honor the confidentiality of mediation, we understand that the Sealaska Study Group will present to this Committee a report on this controversy with analysis of various settlement options. We urge this Committee to support this effort to find a comprehensive, permanent solution to

Senator **Murkowski**. Well, first of all, please convey to Mr. Zaelke my condolences. I trust that he will quickly recover. I had looked forward to him being here, but I certainly understand he was taken ill.

I wonder if you could provide us with any information as to the extent of the assistance that the Sierra Club has provided to Angoon, and any other agencies that have the corresponding point of view of the Sierra Club?

Mr. **Howard**. Senator, I do not have that information with me today. The Sierra Club will be glad to provide it for the committee.

Senator **Murkowski**. We would like to know for the record your contribution in dollars and in-kind services, and to whom.

Mr. **Howard**. Do you want that dating back to the original Sierra Club involvement in Admiralty Island?

Senator **Murkowski**. No; I do not think it is appropriate that the Sierra Club's interest go prior to the Shee Atika dispute because I am sure that the Sierra Club had an interest in Admiralty Island prior to the development of the suit after the 23,000 acres was awarded by Congress.

Mr. **Howard**. Therefore, you do not want to know since 1974, since *Kootznoowoo* v. *Andrus*, considering that past history and——

Senator **Murkowski**. Go ahead. You can break it down by years. It would be most acceptable.

I noted several references to what, in Mr. Zaelke's opinion, I guess, were the correct proceedings and ultimate hope for resolution of this matter. It appears that the position of the Sierra Club is dedicated to their particular point of view prevailing, and there is no acknowledgment or recognition of the protection or rights of Shee Atika. I gathered that from the testimony which you read from Mr. Zaelke's letter. Would you come to the same conclusion? Are there any rights that are or should be afforded, in the opinion of the Sierra Club, to the Shee Atika people?

Mr. **Howard**. Senator, the Sierra Club recognizes Shee Atika's Native entitlement. What we are disputing is why it is on Admiralty, and if it is on Admiralty what can they do with that entitlement without affecting the public lands adjacent to that? Now the Sierra Club would enjoy immensely if Shee Atika was running a profitable operation.

Senator **Murkowski**. What kind of an operation?

Mr. **Howard**. A profitable operation, and we are working to try to find solutions to this problem that will ensure that Shee Atika will have an opportunity for profitmaking. This is something that I think they have raised as a red herring, and I think——

Senator **Murkowski**. What is it? What would be the red herring?

Mr. **Howard**. Well, I think the focus on the Sierra Club and the lis pendens is a red herring. It is a diversion. If you want to get rid of the litigation, which is——

Senator **Murkowski**. Well, if it is a red herring, then what is their real motivation?

Mr. **Howard**. Their real motivation, I think, is to draw attention away from some of their own questionable business judgments that they have made.

Senator **Murkowski**. You mean their hotel?

Mr. HOWARD. The hotel. I think that there are a lot of other reasons that may fit.

Senator MURKOWSKI. Well, you know, there are many Native corporations in Alaska that have gone into the hotel business, or public service or whatever.

Mr. HOWARD. I understand that.

Senator MURKOWSKI. Do you feel that, had the Sierra Club not intervened, that the Shee Atika people would have been able to pursue logging on Admiralty Island in conjunction with the award of the 23,000 acres?

Mr. HOWARD. Sir, the feeling I get—and I cannot respond to a hypothetical question with any sort of exactness—the feeling I get from talking to the people in Angoon is that they would have found the resources to fight this, had it been for the assistance of the Sierra Club.

Senator MURKOWSKI. Were you aware that portions of Admiralty Island had been logged infrequently for over 130 years?

Mr. HOWARD. Yes; I was aware that there were small areas cut on the island.

Senator MURKOWSKI. Do you have any idea what 23,000 acres equates to on 1 million acres, as to whether in your opinion that is small, medium, modest, significant, large?

Mr. HOWARD. Well, I think it is a significant part of the subsistence habitat. That is the way you want to be looking at it. You want to look at the 23,000 acres in terms of subsistence habitat, and then 23,000 acres in terms of when you clearcut that, what the impact is on adjacent lands. I think that you will find that by looking at the problem that way, that you see a much greater impact than would just be indicated by comparing acreage.

Senator MURKOWSKI. Well, much has been made of the subsistence issue, and those of us who have lived in southeastern Alaska have our own opinions as to the damage that a log dump—particularly under the permitting process that is mandatory today—will have on the subsistence uses. Especially since in this case that log dump is some 30 miles away from the village of Angoon.

I did not question the witnesses yesterday on the extent of their utilization of the Cube Cove area, how many of the people went in and hunted and dug clams and set out crab pots, and so forth. That information has been made available and entered in evidence in previous hearings. However, much has been made as to why the Shee Atika people would make a selection in a monument. Speaking on behalf of the Sierra Club, is that your interpretation, that they made a selection in a monument. Is there not a distinct difference since Congress has dictated the manner in which this land was both set aside in a monument and made available for selection by law?

Mr. HOWARD. Well, I think that Shee Atika knew, if it was not a monument, it was at least someplace that was being considered for monument/wilderness status. There had been many proposals to preserve it because of its unique ecological integrity.

Senator MURKOWSKI. Now there is a potential for mining. There has been an area set aside outside the monument for mineral development. I am sure the Sierra Club is aware of that.

Mr. HOWARD. Yes; we are.

Senator **Murkowski**. This is true on many of the islands of southeastern Alaska. The point I want to make is that the Shee Atika people have been criticized for making a selection in a monument. I am not an attorney but I have had a good deal of legal opinion on this. Legal opinion seems to indicate that under the law Shee Atika had that option. The remainder of the island or that area set aside outside the logging area or surrounding it is the monument.

In your opinion, 1 million acres is a pretty good chunk of real estate——

Mr. **Howard**. Yes. I would like to own some, out in Virginia somewhere.

Senator **Murkowski**. Yes. I think, next to Prince of Wales, Admiralty is the largest island in southeastern Alaska.

Mr. **Howard**. That is probably true. I have heard that it is one and a half times the size of Rhode Island, Senator Chafee notwithstanding.

Senator **Murkowski**. The Sierra Club has supported the claim that indeed the subsistence rights, which we do not contest, are very much a part of this debate. I wonder if you could put into proportion, for me and my edification, how one log dump 30 miles away is going to harm the subsistence rights of 600 people that have the balance of in excess of 200 miles of coastline.

Mr. **Howard**. Again, I beg to differ. I think we are dealing with different facts. There are 200 miles of coastline on Admirality Island.

Senator **Murkowski**. There is more than that.

Mr. **Howard**. There is more than that, but all of that area is not used as a subsistence area by the people in Angoon. As a matter of fact, few get up to the Hawk Inlet. I mean, that is probably the northern reach of where they go, and Cube Cove is just inside of that. Therefore, what we are talking about is chipping away at the areas that they use for their subsistence.

You have already mentioned the Greens Creek Mine. That is going to take away something. Shee Atika comes in and clearcuts in three drainages which go almost all the way across the island; this threatens to cut the island off ecologically, so that you have impacts which affect the rest of the island in a very significant way, Senator.

That is what we are asking the corps to look at in the EIS. We want the study. We want to know the facts. We are assuming the fact that there is going to be no impact on subsistence, and I am sure that your counsel will tell you it is important to have the facts before we act on any of this. I think that is the purposes behind the EIS, to collect those facts, and I think that when they are collected this problem will be a lot clearer.

Senator **Murkowski**. Can you advise me whether the Sierra Club intends to challenge the environmental impact study regardless of how it comes down?

Mr. **Howard**. Senator, we will challenge it if it appears that that is something that we need to do at that time, and if there is something wrong with it, if it has been pushed through, if they failed to follow the law.

Senator MURKOWSKI. You indicated a few minutes ago you want certainty. Obviously, we are both practical individuals and you are not going to have certainty.

Mr. HOWARD. That is right.

Senator MURKOWSKI. As you say, the permitting process is underway, the environmental impact statement is in the process now. My question is, are you going to accept that? Obviously, it is the best effort of the expertise available, and the various Government agencies have the responsibility of doing the best job they can. Since this is the first environmental impact study done on a log dump, although there have been efforts made previously to approach a point which the environmental impact study takes off from, the logical question comes to mind: Is the Sierra Club going to be satisfied with that?

Mr. HOWARD. I fully expect that. At this point I have no reason to believe that they would not be. I have talked to the people at the corps that are doing the study——

Senator MURKOWSKI. Well, could you indicate to me that you will be bound by whatever the environmental impact statement dictates?

Mr. HOWARD. Senator, I can not answer that.

Senator MURKOWSKI. Who can?

Mr. HOWARD. I do not know. I do not think anybody can answer that.

Senator MURKOWSKI. How does the Sierra Club work with regard to making decisions of this nature?

Mr. HOWARD. Well, Senator, I think we would have to see the study before we say that we are going to be bound by it. You know, they can send us a blank envelope and say, "Here is your EIS." I am not going to tell you today I am going to be bound by that.

I have every expectation—and I have talked to the people at the corps—that they are doing a good job on this study and they are looking at the proper things, where they should be looking. I think that if they continue along that course, that there should be no problem in the EIS. I think that the EIS will be important in demonstrating the need for settlement, maybe getting us out of this adversarial mode and getting us talking.

Senator MURKOWSKI. You basically subscribe to the statement made by Mr. Zaelke with regard to a letter dated September 3, concerning the Admiralty Island National Monument?

Mr. HOWARD. Is that the fundraising letter?

Senator MURKOWSKI. Yes.

Mr. HOWARD. Do I subscribe to it?

Senator MURKOWSKI. Yes.

Mr. HOWARD. Well, I did not get one. I did not send them any money, but I have read it. I had it read to me yesterday, and I think it is a fairly accurate statement of advocacy.

Senator MURKOWSKI. I presume it represents the policy of the Sierra Club with regard to the Admiralty Island issue before us?

Mr. HOWARD. I would say so.

Senator MURKOWSKI. Well, the last paragraph—and I quote—the value of Angoon's subsistence culture and the natural resources it depends upon is "inestimable." "We must do everything we can to keep it as it has been for 10,000 years—Kootznoowoo, 'The Fortress of the Bears.' "

Mr. **Howard**. I believe that is Kootznoowoo.

Senator **Murkowski**. That is correct. It is Kootznoowoo. In any regard, do you interpret that the same way I do, to mean that there is pretty much a policy commitment by the Sierra Club to fight this thing all the way, regardless of what it may take and regardless of what the environmental impact study may dictate; that you are basically opposed to logging of any kind on Admiralty Island?

Mr. **Howard**. Senator, the Sierra Club has and will continue to stand on the rights that inure to members of the public that use Admiralty Island, and that includes the enforcement of the environmental laws of this country. They do that in Alaska; they do that in Alabama; they do that around the country. I do not see anything wrong with a public interest group standing on the rights which Congress—I have heard so much about what Congress has said—Congress has said for every major Federal action, "you do an impact study."

Senator **Murkowski**. Well, I have no problem with that. We are both concerned with justice and rights. The question is, Do the other parties have any rights? That is something that Congress has already answered. They have given Shee Atika their rights. Shee Atika has made their selection, but the litigation continues.

What I am attempting to do, is to get some idea of whether the Sierra Club is going to be bound by the law of the land and the process. I am speaking of the dictates of the environmental impact study. Is the Sierra Club going to challenge that, too? There is nothing wrong, and I concur with your analysis that the Sierra Club is free to pursue the interests dictated by their charter, but I am also concerned with the rights of individuals that Congress has an obligation to protect.

Throughout the statements that you have made I get the underlying feeling that the rights are strictly one way, and that is the way the Sierra Club feels about this particular issue. You know, it reminds me of what appears to be going on at Judge Clark's hearing on his nomination. Some of the groups that oppose him, oppose him because he does not reassure them that he will necessarily support their position. His responsibility dictates that he follow the law of the land and be objective.

It is the position of at least this hearing officer that what we have here is a mutual right, a mutual concern. I would feel much relieved if you could tell me that the Sierra Club indeed would be bound by the process. I am not suggesting you give up your rights to pursue litigation but, good heavens, this thing has been going on 3 years. We have gotten into the first environmental impact study ever done on a log dump, and we have no assurance that that is going to be the end of it.

Mr. **Howard**. Senator, the Sierra Club will continue to be bound by the law and the dictates of the court.

Senator **Murkowski**. No question about that.

Mr. **Howard**. You know, if that is what you are asking, we will continue to be bound by that.

Senator **Murkowski**. No. I am asking if you will abide by the process set up under the law and that process is obviously the environmental impact study. You know as well as I do that the law leaves much flexibility for abuse. I am not here to dictate whether there is an abuse or not. I am simply here to ask you if, in your professional opinion as a representative of the Sierra Club, you are going to be bound by the due process set up by the law; that is, the environmental impact study.

Mr. **Howard**. Senator, I should make one thing clear. I thought that was clear, and I realized I should have said this at the beginning. I am not an attorney. I have graduated from law school, and have not received a notification from the bar yet as to the results of my bar exam. If you know something that I do not, please let me know.

I would like to mention, to point out to you, that I am seeing a distinction being made here between when Shee Atika's representatives get up here and express their rights and deny the Sierra Club any rights to pursue things in court—that is called advocacy and that is called, you know, being an effective advocate—and when we get up here and try to express our rights, it is called failing to recognize the other side's rights.

We do recognize Shee Atika's rights, and we would love—nothing would make me personally more happy or make the Sierra Club more happy than to see Shee Atika have an entitlement that was clear, that had the ability to be developed in a profitable way. We will do everything we can do to help them achieve that, but we——

Senator **Murkowski**. You have indicated before, that you hoped that we could work together to resolve this dispute. Do you have any suggestions at this time of what might be pursued to resolve this matter? Do you have some solutions in mind?

Mr. **Howard**. Senator, I understand that there is going to be presented to this committee a report by the Sealaska study group on various settlement options, on-island mitigation to off-island options, cash payments. It is a very complex problem, and I think that it deserves further study. I do not want to embrace whatever Sealaska says because clearly they are not going to embrace us, but I think that they are moving in the right direction and I think that that sort of study should be encouraged.

I cannot give you an exact place. I would love to have this hearing over with, let the anti-Sierra Club hysteria die down a little bit. Maybe some cooler heads will prevail and we will be able to present this committee with a package of settlement, maybe a few packages. There are a number of different options kicking around that we are still busy putting together. It is very difficult to do, with our resources and fighting all these different suits.

Senator **Murkowski**. I gather a sensitivity, but you are reluctant to speak for the Sierra Club. Is that correct? In what basic capacity are you here before us? Are you a spokesman for them?

Mr. **Howard**. I am today a spokesman for the Sierra Club. I am familiar with the litigation. I was just realizing last night that I drafted the original request for a hearing before the Alaska Department of Environmental Conservation when I was a clerk in Juneau, so I am familiar with the processes.

Senator MURKOWSKI. You can speak on behalf of the Sierra Club?

Mr. HOWARD. Yes, I can, Senator.

Senator MURKOWSKI. OK. We are aware that there has been an expenditure of literally millions of dollars in litigation up to this time. It would appear that during that 3 years, or thereabouts, it would have been expeditious to try and reach some kind of a settlement. With the obvious legal resources of the Sierra Club, I am not aware that these have been put forward in a positive manner. Rather, the decision seems to have been to utilize the litigation route.

It would seem to this hearing officer that, based on the Sierra Club's tremendous ability to solicit tax-exempt funds through their national solicitation process, such as the letter that was submitted in the record yesterday, that it indeed puts an organization like Shee Atika at a bit of a disadvantage by not having the resources to litigate. Within this 3-year period of time, was there any thought by the Sierra Club to try and resolve this matter through an exchange or a specific trade that would be acceptable to the parties concerned, or have they chosen the other route, which appears to be one of extended litigation which has already cost millions of dollars?

Mr. HOWARD. Senator, I would like to read something into the record right now. This is a telegram which was sent from San Francisco on April 20, in April of this year, and it is to Roger Snippen, Ethel Staton, Shee Atika Lodge, Sitka, AK. It says:

> The subsistence resources of Cube Cove and adjacent lands are vital to the continued survival of the village of Angoon. To protect Angoon's subsistence resources and the unique wilderness values of Cube Cove and adjacent lands, Angoon and the Sierra Club propose the following settlement to resolve all pending disputes concerning the resources claimed by Shee Atika near Cube Cove on Admiralty Island.
>
> Shee Atika agrees to exchange its resources it claims near Cube Cove on Admiralty Island for resources of equal or greater value that are not located on Admiralty Island. Shee Atika also agrees to dismiss the lawsuit it brought to remove the lis pendens referred to in paragraph three below.
>
> Number two, the village of Angoon, the Sierra Club, and the Wilderness Society agree to dismiss all legal actions involving the resources claimed by Shee Atika near Cube Cove on Admiralty Island.
>
> Three, the Sierra Club agrees to withdraw the lis pendens filed as part of Sierra Club v. Watt, pending in the Federal District Court for the District of Columbia.
>
> Four, the village of Angoon, the Sierra Club, and the Wilderness Society, agree not to file a lis pendens as part of Angoon v. Marsh, pending in the Federal Court for the District of Alaska.
>
> Five, the village of Angoon, the Sierra Club, and the Wilderness Society agree to use their best efforts to assist Shee Atika and the State and the Federal Government to identify alternative resources that are not located on Admiralty Island and to implement an exchange of such alternative resources for Admiralty resources, and to assist Shee Atika to obtain a loan guarantee from the State or Federal Government for operating expenses pending completion of such an exchange.
>
> Six, if such a settlement is accepted, it shall be implemented as a stipulation dismissing the pending legal actions referred to in paragraphs one, two, and three above.

I will say that that would give the courts the power to enforce this settlement.

This was sent this past April. It is only the most recent attempt that we have made to settle this thing, Senator, and I think that it should be known that we have been making efforts since 1974 to settle this thing.

Senator **Murkowski**. Just a minute, now, Mr. Howard. You dictate a settlement settling it your way, which means moving them off their own island.

Mr. **Howard**. Senator, this is an offer. Now the way you deal with these things is, you make an offer. If they do not like it they say, "Wait a minute. We get to stay here." They are taking the absolute position.

Senator **Murkowski**. Well, Mr. Howard, I am sure you are aware that in previous testimony the question was: What are the other alternatives? The availability of timber on the other islands has run afoul of the availability of timber for exchange that is of like value. It would be a very opportune way to resolve this dilemma but unless you come up with some positive suggestions, this is repetitive rhetoric. It has been before us again, and again, and again and the question has been continually asked: What can the people have in exchange?

Mr. **Howard**. Senator, if you will give me 30 days to look over the Sealaska report, I will submit to this committee an alternative land selection that will be of greater or equal value than what Shee Atika has right now, and we will also put together a financial package to help Shee Atika over their current cash flow problems.

Senator **Murkowski**. Where is the land located?

Mr. **Howard**. The Tongass National Forest.

Senator **Murkowski**. You are stating that in your opinion there is an availability of land in the Tongass National Forest?

Mr. **Howard**. Yes, Senator.

Senator **Murkowski**. Did you hear the testimony of Mr. Max Peterson yesterday?

Mr. **Howard**. Yes, I did, Senator.

Senator **Murkowski**. You still feel that there is available land?

Mr. **Howard**. Yes, Senator, I think that there is available land because of the opportunity to exchange that land for—one of the settlement options that has been discussed involves using the Shee Atika claims on Admiralty Island as a reserve, putting it at the end of the priority list for cutting in the Tongass. This would give us more time to evaluate the timber base in the Tongass and would basically defuse this situation for quite some time. That is one option which would not interfere with the available timber in the Tongass, but would defuse the situation so that we can let things cool down and get Shee Atika into a profitable mode. That seems eminently reasonable to me.

Senator **Murkowski**. Well, that is something we would all like to see. However, you have indicated, "Give me 30 days," and I cannot. I am asking, Where were you the last 30 days, or since April, or before that? This has been kicking around for a long, long time. What is the magic that is going to happen in 30 days that has not been available to be pursued——

Mr. **Howard**. Senator, I understand—and, again, I have not seen this so I do not know—but I understand that Sealaska has put together a report on alternatives and identified some of the alternatives as being good. Now I think that Sealaska, you know, they know what they are doing. I think that I should be able to look at that and put something together to put a concrete proposal on the table.

It may not be acceptable. I do not know. I am trying to help this committee do its work, which I think is to find a comprehensive, permanent solution that people can agree on. Beating people over the head with legislation is not going to work, Senator.

Senator **Murkowski**. We have not done that.

Mr. **Howard**. I would like to help the settlement process.

Senator **Murkowski**. What we have attempted to do is to make the law responsive. The litigation has been what has prevented that from occurring. I am just not sure. Obviously, you are going to have an opportunity to spend those 30 days in some kind of a fruitful endeavor to resolve this. I wish you well, but I am afraid that we are going to have a reaction, no matter whose timber you attempt to make available.

It appears from all the discussions I have had that there is a question on the availability of timber in the Tongass National Forest, and particularly the adequacy of the additional areas that are going to be called upon to support the allotments that have already been issued. The contingency areas, according to the testimony of various foresters, are not adequate for the demands that are going to be on them.

You say the timber is coming out of the National Forest but you have inferred that there is some relationship between that and Sealaska's timber holdings. Is this basically what you are suggesting?

Mr. **Howard**. Senator, I think what I would like to do is, if you would give me until whatever 30 days from today is—December 3—I will present to you, and this is Jim Howard personally saying I will present to you a settlement option. Now, again, it may not be great——

Senator **Murkowski**. Well, it is not up to this hearing to make the determination of whether the parties are going to accept a settlement offer.

Mr. **Howard**. No.

Senator **Murkowski**. You will have the opportunity to continue to try and bring the parties together because that is what we wish to happen, and certainly it is not the responsibility nor the obligation of the Chair to act as an intermediary in resolving or accepting or debating the terms of an offer as between the parties concerned.

Mr. **Howard**. No, sir.

Senator **Murkowski**. It is the responsibility of Congress to see that congressional intent is carried out, and that is the purpose of this hearing. We have had a great deal of testimony on the rights of parties to select the land. We have heard a great deal of testimony about the merits of the subsistence economy that they are so dependent upon and the realities associated with logging on Admiralty Island, but we are certainly not going to get involved in whether an offer or a proposal is reasonable or unreasonable. Both sides have adequate representation to make that determination.

I am going to recess this hearing for approximately 15 minutes. We will reconvene at 10:15. Mr. Howard, I would ask that you reappear as a witness at that time. Thank you.

[Recess taken.]

Senator MURKOWSKI. I apologize to the witness and to the remaining witnesses, and to those that are participating, for the delay.

Mr. HOWARD. Senator.

Senator MURKOWSKI. Mr. Howard, we were in a brisk discussion——

Mr. HOWARD. Senator, before we begin, I have some information that may clear up the record here.

Senator MURKOWSKI. You may begin.

Mr. HOWARD. First of all, the Sierra Club has not contributed anything to Angoon in their efforts to preserve Admiralty. They have been representing the Sierra Club all the way along, and will continue to do so, so there have been no cash payments or in-kind services.

Senator MURKOWSKI. You say they will continue to represent them?

Mr. HOWARD. They will continue to represent the Sierra Club. That is our principal client. The Sierra Club Legal Defense Fund is the litigating firm, the public interest law firm that represents the Sierra Club and other public interest clients. That is distinct from the Sierra Club. Neither the Sierra Club nor the Legal Defense Fund has given any money to the city of Angoon or to the IRA Tribe there to litigate these things against Shee Atika.

Senator MURKOWSKI. They have not given them any money but they have represented them. Is that correct?

Mr. HOWARD. Well, we have been coplaintiffs in certain actions.

Senator MURKOWSKI. Would it be your interpretation, then, that they have represented the city of Angoon?

Mr. HOWARD. Yes, sir, but it was also representing the Sierra Club. If Angoon weren't there they would have been representing the Sierra Club, doing the same thing.

Senator MURKOWSKI. OK, so the answer is yes.

Mr. HOWARD. Well, it does not seem that they have conferred any pecuniary benefit on Angoon, as I guess what the point of your question was.

Senator MURKOWSKI. No. the point of my question was whether there were any financial or in-kind services.

Mr. HOWARD. Well, the anwer then is no.

Senator MURKOWSKI. The in-kind service of representation, can that be construed as an in-kind service, in your opinion?

Mr. HOWARD. It was an in-kind service that was provided to the Sierra Club, with Angoon, that when they were agreeing with the motion that we were filing, we would file them together. Angoon is represented by other private counsel, if you really want to get——

Senator MURKOWSKI. Well, I am interested in clarifying the point that you made, that the Sierra Club represented——

Mr. HOWARD. Senator, the Sierra Club Legal Defense Fund is a separate entity from the Sierra Club.

Senator MURKOWSKI. Which one represented Angoon?

Mr. HOWARD. Senator, we do not represent Angoon.

Senator MURKOWSKI. Now when you say "we," is that the Legal Defense Fund or the Sierra Club?

Mr. HOWARD. The Legal Defense Fund represents the Sierra Club.

Senator MURKOWSKI. The Sierra Club does not represent Angoon?

Mr. HOWARD. No, it does not, Senator.

Senator MURKOWSKI. OK. The Legal Defense Fund does?

Mr. HOWARD. No, Senator. I just said that the Legal Defense Fund represents the Sierra Club.

Senator MURKOWSKI. I understand, but earlier you said that you represented Angoon, and I am interested in the determination of who "you" is.

Mr. HOWARD. Senator, I do not believe I said that I represent Angoon. I do not represent anybody. The Legal Defense Fund represents the Sierra Club. Angoon is represented by their own counsel. Now there come times when we are coplaintiffs or codefendants and we desire to file the same motion. Now who types up that motion and sends it out may sometimes be us and sometimes be the other coplaintiff or codefendant. If you want an evaluation of those services, as you call them, I will try to provide that for you, but I assure you it is minimal and the amount of effort that is put in by Angoon's counsel supplied to us would balance that out.

Senator MURKOWSKI. Well, you will recall your statement, "Angoon has asked for our assistance, and we have pledged to provide it. We are providing our assistance. We will continue to provide it as long as Angoon requests it." If you are unable to provide us with a specific, definitive answer of what that consists of at this time, I would appreciate it if you would provide it for the record.

Mr. HOWARD. I will try to clarify that and submit it within the week, Senator.[1] I think we are going around in circles.

Senator MURKOWSKI. I think you would agree that a layman reading this would assume that that could mean any number of things, financial as well as in-kind.

Mr. HOWARD. All right, Senator. I will document that for you, then, and we will try to clarify it that way.

Senator, the other point that I would like to make, which I hope is a little clearer, and it is a minor point, the Sierra Club itself is not a tax-exempt organization. They sell too many calendars. The Legal Defense Fund is a tax-exempt organization.

Senator MURKOWSKI. Do you have any other points you wanted to make?

Mr. HOWARD. Not right now, Senator.

Senator MURKOWSKI. In a letter of Mr. Zaelke's that came in, I believe, on September 3, there is a reference that I will quote. It says, "The Sierra Club Legal Defense Fund is mounting a nationwide campaign to raise the funds necessary for litigation and other legal work needed to enforce the Alaska Lands Act and protect this rightful heritage of all Americans from those who would drill, mine, log, and otherwise thoughtlessly destroy the face of the land and pollute its air and water."

Can you qualify that statement for us? It is rather broad. One could reach the conclusion that the Legal Defense Fund, Inc.—is opposed to all those "who would drill, mine, and log." The point of contention here is the logging.

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[1] See p. 398.

Mr. **Howard**. Well, Senator, I think the key word in there is "thoughtlessly" and, it might be added, "illegally" doing those things.

Senator **Murkowski**. Well, "illegally" is not in here. I just wonder if you subscribe to that statement: "* * * protect this rightful heritage of all Americans from those who would drill, mine, log, and otherwise thoughtlessly destroy the face of the land and pollute its air and water"—"all Americans."

We have an inconsistency in one respect, and it is relevant. The concern is over logging on Admiralty, while approximately the same acreage is available to Kootznoowoo on Prince of Wales. This is an area where a case for subsistence can be made by the villages of Craig, Klawock, and Hydaburg. Although they do not necessarily use those areas, they could if they wanted.

I guess I am concerned with the objectivity of that statement by the Legal Defense Fund, which certainly is broad enough to be interpreted that they are opposed to any and all who would log, and are prepared to raise money to stop it. That is what this letter is: a national solicitation.

Mr. **Howard**. Senator, that is categorically not true.

Senator **Murkowski**. We understand that the legal Defense Fund has commissioned scientific experts who have studied the subsistence question in Cube Cove. They found that construction and operation of the log transfer terminal would render Cube Cove "useless" as a haven for young salmon and as a habitat for dungeness and king crab. I would appreciate that commissioned scientific evidence, which I assume is available to the Sierra Club Legal Defense Fund, to be submitted for the record. I assume that you are aware of the existence of this commissioned scientific evidence. Can you elaborate at all on who provided those studies or came to that conclusion that indeed——

Mr. **Howard**. No, Senator, I cannot speak to those studies.

Senator **Murkowski** [continuing]. The operation of a log transfer terminal would render Cube Cove useless as a haven for young salmon. I wonder if they would come to the same conclusion that that would occur at the log dump over at Dalmai, where there is a salmon stream. But, I suppose that is not relevant to your concern.

Mr. **Howard**. Senator, I think we have to keep putting this thing in perspective. We are talking about a pristine wilderness area. We are not talking about——

Senator **Murkowski**. Which has been logged for 130 years.

Mr. **Howard**. In small amounts, Senator.

Senator **Murkowski**. That is correct.

Mr. **Howard**. We are talking about an area which is important. It has been in contention for a long time, and I think that it should not be surprising that that sort of development in that area deserves a little closer scrutiny than maybe some others do. I think what we are trying to do here is compare apples and oranges.

Senator **Murkowski**. I think that may be true. We are also trying to protect the rights of individuals, as well as to protect the rights of the Sierra Club and its legal defense fund to pursue objectives of its choice. However, it seems to me that there has been very little substantive offered that is acceptable as an alternative. What we see, rather, is an effort to pursue extensive litigation, which Shee Atika is unable to bear. If you compare the availability of resources to litigate, I think you would come to the same conclusion I have: that the Sierra Club Legal Defense Fund is much more able to withstand extensive litigation than Shee Atika.

Mr. **Howard**. Senator, I may point out just for the record that Shee Atika has engaged in some litigation especially focused on the lis pendens, the notice of the lawsuit in Washington, DC, where they have committed a lot of resources to fighting the lis pendens, including a constitutional challenge to the lis pendens statute itself. Now I think many lenders will tell you that it is not the lis pendens, it is the underlying litigation. If they want to resolve that, apparently they have just figured out that summary judgment motions are an effective way to resolve litigation rapidly and they have filed a couple. That is the way those things should be handled. If they really wanted that lis pendens removed, they would have intervened in *Sierra Club* v. *Watt* a long time ago and started pursuing that course.

Senator **Murkowski**. Well, let me ask you directly: Is it the intention of the Sierra Club to force Shee Atika into bankruptcy?

Mr. **Howard**. No, Senator.

Senator **Murkowski**. Is it their intention to drive them off the island?

Mr. **Howard**. Senator, the Sierra Club's purpose is to protect its rights and the rights of the American public in the Admiralty Island National Monument Wilderness Area and to assist the city of Angoon in their efforts to protect their subsistence, as we have been asked to do. As I said in my first statement this morning, when the city of Angoon decides they want to settle, the Sierra Club will sign onto it.

Senator **Murkowski**. Regardless of what the settlement might be?

Mr. **Howard**. Senator, regardless of what the settlement will be.

Senator **Murkowski**. Does the Sierra Club feel any obligation to the people of Shee Atika, who are really part of the same Native group? They are all basically a family.

Mr. **Howard**. Senator, as I said before, the Sierra Club would like to see Shee Atika in a profitable mode. We would like to see them have that opportunity, but we do not think that that includes ensuring the profitability of Native corporations. You start doing that, and you are going to have every Native corporation down here asking for a little bit more than what they already have.

Senator **Murkowski**. I think that is a matter of interpretation, Mr. Howard. Had Shee Atika been able to utilize what Congress, under the law, has given them and what the Secretary of the Interior transferred, I am sure their financial situation would be substantially different than it is now. However, even through extensive litigation they have been unable to achieve that. I think we are both aware of that.

In order to accommodate your request for a 30-day period in which to come up with an alternative answer, and my statement that the hearing record was going to be open for a week, I am going to compromise and extend the hearing record for 2 weeks. I would hope that within that period of time and the time that has previously been made available—which extended from a point beginning last April or even further—you will come up with some reasonable compromise. We will look forward to whatever proposals you submit for the record, Mr. Howard, with regard to our mutual concern to resolve this.

I think you will agree that it is unfortunate that we have these people so divided and that so much bitterness has developed over this issue. I am sure that you can appreciate the interest of Congress in having its will carried out. That will can be changed, but only by some additional legislative procedure. The law now says that the Shee Atika people shall have 23,000 acres on Admiralty Island, yet that law has not been fully carried out.

I respect your right to pursue the interests of the Sierra Club and the Sierra Club Legal Defense Fund. I am a bit concerned about your objectivity when, in your national solicitations you make such broad and sweeping statements, which in my opinion lead to innuendo. There is no recognition that the people of the community of Angoon or their corporation are basically dependent on revenues generated from the timber processing. I think that is important for the public to know the entire story when you solicit funds and to know of the realities associated with the economics of southeastern Alaska. The timber industry plays a major role for jobs throughout the entire area, and virtually every area of southeastern Alaska in one way or another is dependent on the timber industry.

While I can appreciate the pristine wilderness of Admiralty Island, I can also appreciate the concern of the residents of Prince of Wales Island. The heritage of the Natives of Craig, Klaiwock, and Hydaburg on the west coast have, and their subsistence needs, deserve consideration. The reality is that we have a situation where one corporation Kootznoowoo, has moved off Admiralty in pursuing revenues generated from the timber industry——

Mr. HOWARD. Senator, two corporations have moved off, Kootznoowoo and Goldbelt.

Senator MURKOWSKI. Regardless, two of them have moved off and they have done so through their own wishes. They have moved to an area which is further away and does not present the opportunity for their residents to have the choice of commuting from their village to their job site, because Prince of Wales is a long way away. The people of Angoon do not have the opportunity to determine whether or not they want to involve themselves in jobs in the timber industry. They would have that opportunity if the logging operation was allowed on Admiralty.

However, that is a self-determination issue and the people have every right to determine whether or not they wish to move. By the same token, the Shee Atika people have the same rights. The purpose of this hearing is to examine whether congressional intent has been carried out.

I have no further questions. I excuse you, Mr. Howard. I appreciate your testimony. I think that you have been a good witness. You have attempted to respond fairly, and I will look forward to examining the record and the submission of the particular items that you indicated you would provide for us.

Mr. **Howard**. Thank you, Senator. I hope that this hearing helps the resolution of this matter and we can put this behind us rapidly. Thank you.

Senator **Murkowski**. Well, it seems to me, as far as the resolution, Mr. Howard, obviously somebody is going to have to win and somebody is going to have to lose, and I do not know who that is going to be.

Mr. **Howard**. Senator, I do not think so. I think that is the mode it is in now, and I am going to try to present you something that will show you that everybody can win here.

Senator **Murkowski**. Well, do not present it to me.

Mr. **Howard**. Well, I will present it to the public record.[1]

Senator **Murkowski**. You can present it to the record, but the negotiations will obviously have to be made by the parties concerned. I would hope that the financial situation of Shee Atika does not dictate a solution because there are no alternative choices due to Shee Atika's inability to stay in the arena. I am sure you hope that as well.

Mr. **Howard**. I certainly do, Senator. Thank you for your time.

Senator **Murkowski**. Thank you.

[Subsequent to the hearing the following correspondence was received for the record. Testimony resumes on p. 412.]

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[1] See p. 400.

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November 17, 1983

RECEIVED NOV 21 1983

The Honorable
Mark Andrews
Chairman, Senate Select Committee
on Indian Affairs
Washington, D.C. 20510

Dear Senator Andrews:

This letter responds to your November 8, 1983 letter. I would first like to say I appreciated the opportunity to participate in the oversite hearing chaired by Senator Frank Murkowski on November 2-3, 1983. I agree that we all have spent a good deal of time so far on this issue, and I join you in hoping this is a step toward agreement.

Regarding the three additional questions, they are repeated below, with my response following.

QUESTION 1: What financial assistance and in-kind contributions were made by the Sierra Club/ Sierra Club Legal Defense Fund to the City of Angoon or Kootznoowoo, Inc?

ANSWER 1: The Sierra Club/Sierra Club Legal Defense Fund, Inc., has never provided any financial contributions to Angoon or Kootznoowoo, nor has the Sierra Club ever provided any in-kind contributions. The Sierra Club Legal Defense Fund has worked closely with Angoon on legal matters where both Angoon and the Sierra Club are parties. As part of the work on these legal matters, Angoon's lawyers and Sierra Club Legal Defense Fund lawyers and law clerks have shared their expertise and have jointly produced various legal papers.

QUESTION 2: What is the extent of the assistance that the Sierra Club has provided to Angoon and to any other particular agencies that have the corresponding point of view of the Sierra Club?

ANSWER 2: The Sierra Club's assistance to Angoon has been largely in the form of moral support for Angoon's efforts to preserve their traditional subsistence culture. In particular, Dr. Edgar Wayburn, Chairman of the Alaska Task Force of the Sierra Club, has visited Angoon on several occasions, and has met with Angoon, Kootznoowoo, Sealaska, and Susan Ruddy, the mediator, in Juneau and San Francisco in an attempt to find a solution that would both preserve Angoon's subsistence culture and enhance Shee Atika's economic base. In addition, the Sierra Club has agreed to help Angoon ensure that all environmental protection measures applicable to Admiralty are strictly enforced by state and federal agencies.

QUESTION 3: What is the proposal regarding an alternative solution to the controversy that you offered to submit?

ANSWER 3: The proposal regarding an alternative solution is attached. If agreed to by all parties, it would increase Shee Atika's economic base while at the same time preserving Angoon's traditional subsistence culture. The proposal is in draft form only; it has been circulated to as many of the parties as possible in the two weeks available, and their comments are being incorporated now. The final version will be substituted for the draft as soon as possible.

As noted in the introduction to the proposal, it was prepared largely by Sterling Bolima, the President of Kanulku Timber Corporation of Kootznoowoo. It is a much more complete development of one of the proposals in the Sealaska report submitted to the Committee on November 3, 1983.

Sincerely,

James C. Howard
Law Clerk

JCH:sm
enclosure

A SETTLEMENT PROPOSAL FOR THE ADMIRALTY ISLAND CONTROVERSY

INTRODUCTION:

This settlement proposal is submitted in response to the request of Senator Frank Murkowski at the oversight hearings of the Senate Select Committee on Indian Affairs held November 2 and 3, 1983 in Washington, D.C. It represents the hard work of many people especially, Clarice Frank of Angoon as a temporary employee of Kootznoowoo Inc., and Bill Munday, a guest in Angoon, on a voluntary basis. The work was done under the supervision of Sterling Bolima, the President of Kanalku Timber Management Corporation at no cost.

That this proposal is the result of the efforts of Angoon natives, their friends, and Kootznoowoo, Inc. is an indication of the desire of these Alaskan natives to resolve this dispute. Again, the Sierra Club will support any settlement which is acceptable to the people of Angoon.

Attempts have been made to incorporate the comments of as many of the interested parties as the short time frame of two weeks would allow. Efforts to contact Hydaburg, Kassan, or other Native Corporations in the vicinity or LPK have proved fruitless so far. If the initial reaction to this proposal is favorable, further efforts will be made to contact these corporations and other interested groups and individuals for their comments and input.

This proposal is offered in the sincere hope that this effort will continue expeditiously toward resolution, that interested parties will contribute to this proposal and that a framework for future action can be established to rapidly accomplish the goals of the parties. In this way, everybody can win. Shee Atika can have its land entitlement to develop in a profitable manner, Angoon's subsistence culture can be preserved and the Wilderness-Monument values of Admiralty Island can be protected.

SUMMARY:

This settlement proposes the exchange by Shee Atika of their Admiralty lands for lands near Cholmondeley Sound ("Cholmondeley Lands") and the dismissal of all pending litigations. Preliminary indications are that the Cholmondeley Lands contain 44% more timber of higher quality than Shee Atika's Admiralty lands. Also, preliminary indications are that the operating characteristics of the Cholmondeley lands will result in lower development costs.

This exchange may also involve land exchanges by Kootznoowoo, Hydaburg and other Native Corporations, with benefit to all the lands near The Cholmondeley Lands.

Some form of compensation may be appropriate for Louisiana Pacific Ketchikan.

THE PROPOSAL METHODOLOGY:

Recognizing that the uncertainty about the availability and the value of alternate land selections was a major obstacle to agreement on prior settlement proposals, see Exhibit C, this proposal focuses on the question of exchange lands. This proposal is basically an expansion of one of the many "good" land exchange options in the Sealaska Study Group Report that was made part of the record at the hearing on November 3, 1983. SEALASKA STUDY GROUP REPORT, option code II-D-2, p. 56. Exhibit D.

The method used to evaluate this option is the same method that Kootznoowoo initially used in making their land selections. This method is also used by Sealaska and other corporations to make preliminary judgements in their land selection processes. It is thought that Shee Atika used this technique to make their Admiralty selections.

After the determination was made as to the general area, timber type maps were colored to reflect the relative values of the timber stands with red and orange being the highest values and brown being the lowest value. The area was then divided into 40 acre parcels and the highest timber value parcels were selected then the next highest and so on until 23,000 acres were selected. At this point topographic features were studied to determine whether the lands thus selected were accessible to contiguous land and would be easily manageable with a minimum of roading. Adjustments were then made by dropping inaccessible or hard to road parcels and substituting the next highest valued alternatives.

Volume measurements were made of the various timber types in the selected area and compared with volume measurements of the Admiralty lands. The U.S Forest Service VCU statistics and the U.S. Forest Service timber type maps were used were used in determining timber volumes for both properties to assure uniformity in the information used for comparison.

The amounts and types of timber may vary from Shee Atika's documentation. However, the volumes used in this proposal are only meant to relate to one another, and no effort was made to reconcile this data with Shee Atika's inventory. At present, there is no reason to suspect that the actual timber volumes will compare differently.

Timber types on the timber type maps are listed by categories as having timber volumes of:

8,000 to 20,000 BF/acre
20,000 to 30,000 BF/acre
30,000 to 50,000 BF/acre
and
50,000+ BF/acre

Since there was no way of knowing, by the maps, how much the volume in each category exceeds the lower number, the lower volume was used in these calculations. Therefore, the volumes listed in the comparisions show the lowest possible volumes for each area. The actual volumes will exceed the conservative estimates used for comparison.

The comparisons of the timber type categories on Admiralty and Cholmendeley are shown below.

COMPARISON OF TIMBER VOLUMES
PER TIMBER TYPE
ON
ADMIRALTY AND CHOLMENDELEY

	CHOLMENDELEY	ADMIRALTY
Spruce/Hemlock 50,000+BF	36,900 MBF	0 MBF
Hemlock/Spruce 50,000+BF	395,500 MBF	22,200 MBF
Hemlock/Spruce 30,000+BF	148,620 MBF	248,620 MBF
Hemlock/Spruce 20,000+BF	76,460 MBF	168,880 MBF
Hemlock/Spruce 8,000+BF	13,112 MBF	28,426 MBF
TOTAL VOLUMES	670,092 MBF	468,334 MBF

NOTE: A more detailed analysis is attached as Exhibit A. Exhibit B is a map of the alternate area

As can be seen above, the Cholmendeley Lands have much more timber in the higher grades, in higher concentrations, and with greater Total Volume, than the Admiralty lands. The reason for this is because:

> "Sitka Spruce and Western Hemlock forests thrive in a superhumid climate, greatly influenced by prevailing westerly winds from the Pacific. While the climax old-growth Spruce/Hemlock forest occurs throughout Southeast Alaska, the mature trees are generally larger and thriftier in the areas of southern Southeast Aleaska." (Silvics of Forest Trees of the United States -- Agricultural Handbook No. 271)

OTHER BENEFITS OF EXCHANGE:

Besides increased timber volumes and values, this proposal makes use of a tract of land that became isolated when native selections were made in the area. It ties in neatly with existing private ownership and enhances the value of surrounding private lands. Its close proximity to other Native Corporation timber lands offers potential cost savings by combining parts of the harvest operations. It is also close to loading and supply ports such as Ketchikan, Wrangell and Metlakatla. And being in the center of on going logging activity, there are skilled contractors and labor readily available.

The geographical layout also provides advantages. For example, there are more potential log transfer sites, on protected inside waters. This area has a longer logging season.

OTHER EXCHANGES:

The Cholmondelely lands are in the contingency area for the 50 year sale to LPK. Section 22(f) of ANSCA and section 1302 of ANILCA allow land exchanges in the public interest. Timber in other parts of the contingency area or other parts of the forest or other compensation consistent with LPK's needs can be substituted for this contingency timber if necessary. see section 1614 of ANCSA.

The Hydaburg Corporation has made an application to exchange some of their lands for lands adjacent to this proposal. Some of the land abuts Kootznoowoo's proposed selection, and the selections of Kassan and Sealaska. Kootznoowoo would be willing to release some of the land withdrawn for them under section 506 of ANILCA to accomodate this selection. A cooperative effort to develop a well though out and comprehensive plan for the management of this area can have beneficial effects for all of the Native groups involved and will serve the public interest. Again, costs savings can be realized through cost sharing and other cooperative efforts.

Exact boundaries of the Hydaburg exchange, the Kootznoowoo selections, and the Sealaska selections are not currently available. It is believed that with the addition of further Native ownership in this area the adjacent landowners may want to adjust the boundaries of their selections so that the entire area can be managed economically. This land exchange can take place simultaneously with the Hydaburg exchange. Any areas in the proposal that overlap other Native selections are inadverdent and other land has been identified to make adjustments if this proves to be the case.

Other adjustments in the selection boundaries can be made for fish and wildlife protection purposes. Much more information is available through the Forest Service, Ketchikan office, and the State of Alaska. It was not possible to gather this data in the short time available to complete this project.

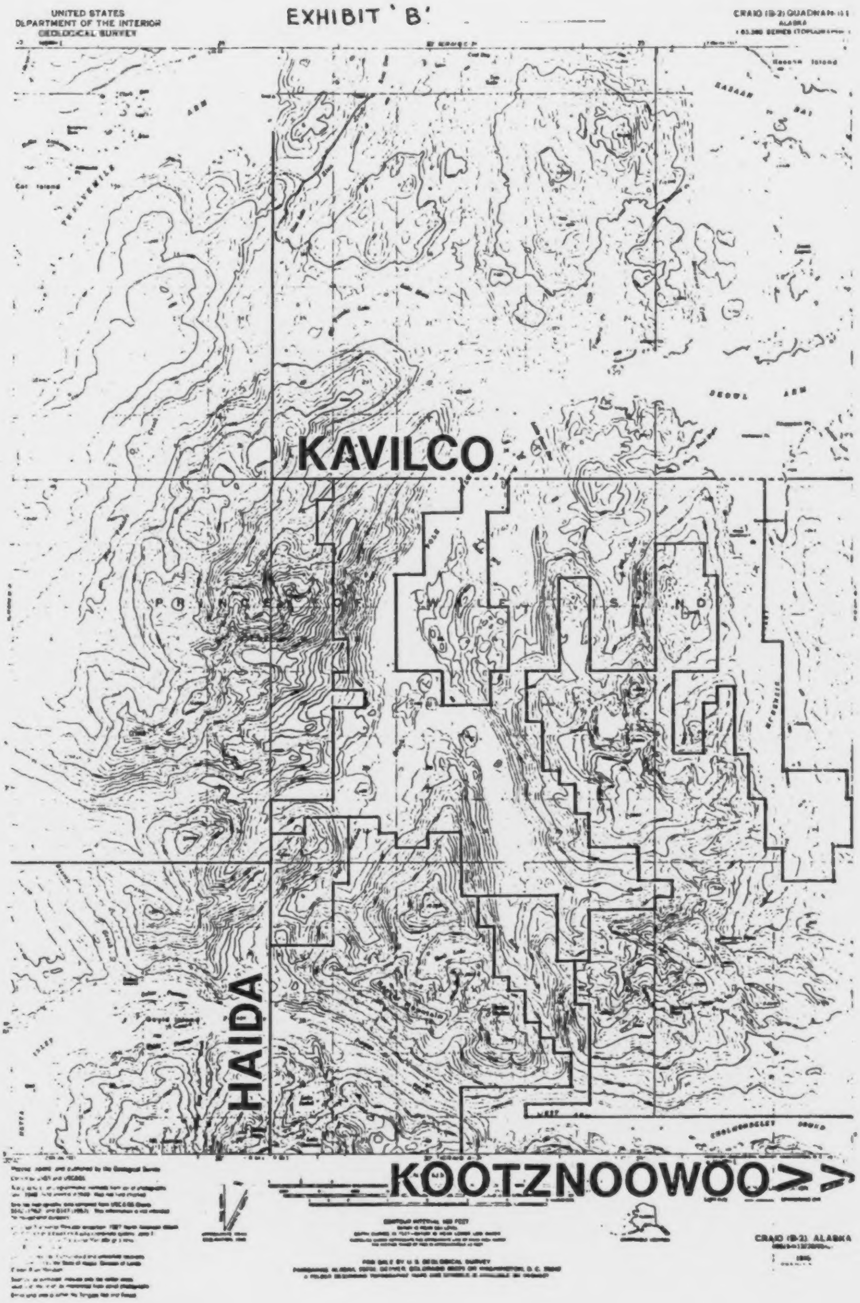
CONCLUSION:

This settlement proposal provides an opportunity to resolve this long and bitter dispute in a way that both protects Angoon's traditional subsistence culture and enhances Shee Atika's economic resource base. It would be extremely helpful if the Forest Service (and perhaps the GAO) would study this proposal to further document the relative values to all the parties of such a settlement and, if necessary, to help design a plan to provide Shee Atika with the means to put the Cholmondeley lands to productive use as soon as possible. If other assistance is required to implement a settlement, the Sierra Club and the Sierra Club Legal Defense Fund, Inc. offer to provide such asssitance or encourage appropriate groups or individuals to do so.

EXHIBIT A

	ADMIRALTY		CHOLMENDELEY	
TIMBER TYPE	ACRES	VOLUME	ACRES	VOLUME
Spruce/Hemlock 50+MBF	None	None	738	36,900 MBF
Hemlock/Spruce 50+MBF	444	22,200 MBF	7,910	395,500 MBF
Hemlock/Spruce 30+MBF	8,293	248,790 MBF	4,954	148,620 MBF
Hemlock/Spruce 20+MBF	8,444	168,880 MBF	3,823	76,460 MBF
Hemlock/Spruce 8+MBF	3,558	28,464 MBF	1,639	13,110 MBF
Second Growth Forest	None	NO ASSIGNED VALUE	1,659	NO ASSIGNED VALUE
Non-Commercial Forest	1,614	None	2,294	None
Water/Other	520	None	Included in non-commercial	
TOTALS	23,000	468,334 MBF	23,015	670,092 MBF

EXHIBIT 'B'


UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
CRAIG (B-2) QUADRANGLE
ALASKA
1:63,360 SERIES (TOPOGRAPHIC)
KASAAN BAY
KAVILCO
HAIDA
KOOTZNOOWOO>>
CRAIG (B-2), ALASKA

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

4155676100 MGM TDBN SAN FRANCISCO CA 339 04-20 0632P EST Exhibit'C'
ZIP
ROGER SNIPPEN, PRESIDENT,
ETHEL STYTON, CHAIRPERSON BOARD OF DIRECTORS
SHEE ATIKA INC SHEE ATIKA LODGE
SITKA AK 99835

THE SUBSISTENCE RESOURCES OF CUBE COVE AND ADJACENT LANDS ARE VITAL TO THE CONTINUED SURVIVAL OF THE VILLAGE OF ANGOON, TO PROTECT ANGOON'S SUBSISTENCE RESOURCES AND THE UNIQUE WILDERNESS VALUES OF CUBE COVE AND ADJACENT LANDS, ANGOON AND THE SIERRA CLUB PROPOSE THE FOLLOWING SETTLEMENT TO RESOLVE ALL PENDING DISPUTES CONCERNING THE RESOURCES CLAIMED BY SHEE ATIKA NEAR CUBE COVE ON ADMIRALTY ISLAND;

1,SHEE ATIKA AGREES TO EXCHANGE THE RESOURCES IT CLAIMS NEAR CUBE COVE ON ADMIRALTY ISLAND FOR RESOURCES OF EQUAL OR GREATER VALUE THAT ARE NOT LOCATED ON ADMIRALTY ISLAND; SHE ATIKA ALSO AGREES TO DISMISS THE LAWSUIT BROUGHT TO REMOVE THE LIS PENDENS REFERRED TO IN PARAGRAPH 3 BELOW,

2, THE VILLAGE OF ANGOON, THE SIERRA CLUB, AND THE WILDERNESS SOCIETY AGREE TO DISMISS ALL LEGAL ACTIONS INVOLVING THE RESOURCES CLAIMED BY SHEE ATIKA NEAR CUBE COVE ON ADMIRALTY ISLAND,

3, THE SIERRA CLUB AGREES TO WITHDRAW THE LIS PENDENS FILED AS PART OF SIERRA CLUB V WATT, PENDING IN THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,

4, THE VILLAGE OF ANGOON, THE SIERRA CLUB, AND THE WILDERNESS SOCIETY AGREE NOT TO FILE A LIS PENDENS AS PART OF ANGOON V MARSH, PENDING IN THE FEDERAL DISTRICT COURT OF ALASKA,

5, THE VILLAGE OF ANGOON, THE SIERRA CLUB, AND THE WILDERNESS SOCIETY AGREE TO USE THEIR BEST EFFORTS TO ASSIST SHEE ATIKA AND THE STATE AND FEDERAL GOVERNMENTS TO IDENTIFY ALTERNATIVE RESOURCES THAT ARE NOT LOCATED ON ADMIRALTY ISLAND; TO IMPLEMENT AN EXCHANGE OF SUCH ALTERNATIVE RESOURCES FOR THE ADMIRALTY RESOURCES; AND TO ASSIST SHEE ATIKA TO OBTAIN A LOAN GUARANTEE FROM THE STATE OR FEDERAL GOVERNMENT FOR OPERATING EXPENSES PENDING COMPLETION OF SUCH AN EXCHANGE,

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

PAGE 2

6, IF THE SETTLEMENT IS ACCEPTED, IT SHALL BEIMPLEMENTED AS A STIPULATION DISMISSING THE PENDING LEGAL ACTIONS REFERRED TO IN PARAGRAPH 1, 2 AND 3 ABOVE,

WALY FRANK, MAYOR OF ANGOON
JACK HESSION ALASKA REPRESENTATIVE SIERRA CLUB

****

EXHIBIT 'D'

Option Code II-D-2

POLK INLET
VCUs 614-618, 620

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 32,252 acres. CFL acreage constitutes about 46% of the total area in these VCUs. CFL timber stands average 26 MBF/acre. Total timber volume of normal operability amounts to approximately 618 million board feet.

Infrastructure: Two log transfer facilities and one floating camp will be needed to operate in this area.

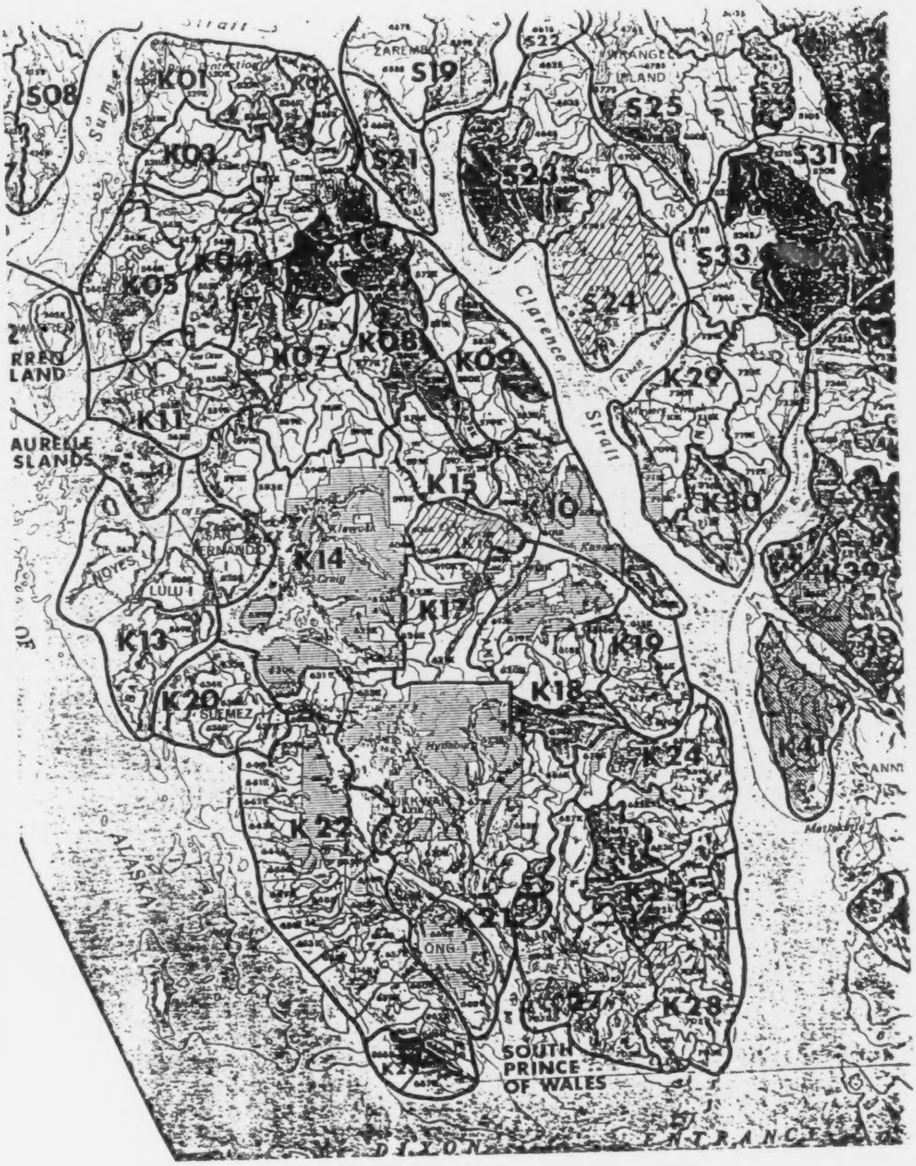
Operating Logistics: This area is easily accessible. Topography in the area is average with a high concentration of streams in the area. Road construction conditions are rated as average. The length of the logging season is estimated to be 8 months.

Selection Potential: This area is rated as having good selection potential.

* *

COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.


S08
K01
K03
S19
ZAREMBO
S22
WRANGELL ISLAND
S25
S21
S23
S31
S33
S24
Clarence
Strait
K04
K05
K07
K08
K09
K29
RREN LAND
K11
AURELLE SLANDS
K15
K10
K30
K14
Klawock
Craig
SAN FERNANDO
NOYES
LULU I
K17
K39
K13
K19
K18
K20
SUEMEZ
K24
K41
Hydaburg
K22
ALASKA
K21
LONG I
K27
K28
SOUTH PRINCE OF WALES
DIXON
ENTRANCE
Metlakatla

Senator MURKOWSKI. Much later, we approach panel 5, representing Sealaska Regional Corporation: Mr. Bob Loescher, vice president, Sealaska. We have joining Bob, Mr. Eric Eisen, attorney for the firm of Birch, Horton, Bittner, Pestinger, and Anderson. Please be seated, gentlemen. We look forward to your testimony. Bob, please introduce your other witness at the table for the record.

STATEMENT OF ROBERT W. LOESCHER, VICE PRESIDENT, RESOURCE MANAGEMENT, SEALASKA REGIONAL CORP., ACCOMPANIED BY RICHARD HARRIS, MANAGER, ENVIRONMENTAL COORDINATION; AND ERIC EISEN, ESQ., BIRCH, HORTON, BITTNER, PESTINGER & ANDERSON, COUNSEL TO SEALASKA

Mr. LOESCHER. Senator, my name is Robert W. Loescher. I am vice president for resource management for Sealaska Corp. With me today is Richard Harris, who is our manager for environmental coordination in our company. Also I have with me legal counsel, Eric Eisen of Birch, Horton, Bittner, Pestinger, and Anderson, counsel to Sealaska Corp.

Senator MURKOWSKI. Please go ahead, Bob.

Mr. LOESCHER. Senator, I appear before you on behalf of our chairman and chief executive officer, Byron I. Mallott. As you know, we are the regional corporation organized under the Alaska Native Claims Settlement Act for the Natives of southeastern Alaska.

On behalf of approximately 15,500 shareholders of Sealaska Corp., I want to express appreciation to Chairman Andrews, yourself, Mr. Chairman, and the members of the Senate Select Committee on Indian Affairs for affording us the opportunity to comment on the status of Shee Atika, Inc. and its shareholders with regard to the land and benefits it has received under the Settlement Act, its future as a viable business entity, and whether or not a legislative solution is necessary in order to fulfill congressional intent with respect to Shee Atika, Inc.

In the declaration of policy preamble of the Alaska Native Claims Settlement Act, the Congress found and declared that:

> (A) There is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based upon aboriginal land claims; (B) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property . . .

In the case of Shee Atika, Inc., and its Native shareholders originating from Sitka, AK, the enjoyment of the intent of Congress has not been fulfilled. The conveyance to Shee Atika of some 23,073 acres of private property located in the Lake Florence-Ward Creek-Lake Kathleen-Cube Cove drainages on the west side of Admiralty Island continues to be challenged by the Sierra Club and the people of Angoon, AK. Additionally, all efforts by Shee Atika to put its property and timber resources into economic development have been met with legal challenges at every turn where a State or Federal agency review and permit might be required.

This has effectively prevented Shee Atika from harvesting its timberland or even sustaining its corporate existence. No matter what one's views are on these contested issues, there can be no doubt that this result was not intended by Congress when it enacted the Alaska Native Claims Settlement Act and its amendments. Congress provided land as the primary settlement feature with the urban Natives of Juneau, Sitka, Kenai, and Kodiak, and provided a small fund to each of these corporations in the amount of $250,000 to meet startup needs.

Without any other resources to sustain itself, and faced with relentless challenge to its land title and its right to develop its timberlands economically, it is questionable at this point whether Shee Atika, Inc. can, without some form of relief, continue as a viable business entity, or whether the corporation is capable of carrying out its responsibilities to its shareholders as mandated by the Alaska Native Claims Settlement Act.

Sealaska Corp. has a vested interest in the ultimate success or failure of Shee Atika. The shareholders of Shee Atika are also shareholders of Sealaska Corp. The subsurface estate of Shee Atika surface holdings on Admiralty Island are patented to Sealaska Corp. Since the passage of the Settlement Act, Sealaska has continued to support Shee Atika's efforts to secure its land entitlement and maintain its corporate existence by providing over $4 million to Shee Atika. These loans remain outstanding, and any further loans by Sealaska Corp. to Shee Atika for these purposes have ceased for obvious reasons.

From the very onset of Shee Atika's conveyance of Admiralty Island lands, the Sierra Club has attempted to frustrate and prevent Shee Atika from possessing and utilizing its land through the use of judicial intervention. The Sierra Club, in a variety of judicial forums ranging from Federal district courts to State superior courts, has attempted to prohibit and impede Shee Atika's development of its resources and land. They have challenged a variety of Federal and State agency actions and nonactions, and have successfully obtained preliminary injunctive relief halting Shee Atika's development.

In each of these actions, Shee Atika was never made a direct party but was forced to seek intervention in order to participate as the real party in interest. This approach has been seen time after time: The Sierra Club has sought to enjoin the Secretary of Interior, the Department of Agriculture, the Army Corps of Engineers, the Environmental Protection Agency, the Alaska Department of Environmental Conservation, and the Alaska Department of Natural Resources. In these actions, the Sierra Club has been successful in enjoining the appropriate agency's actions and thereby enjoining Shee Atika's attempts to develop its resources.

Shee Atika appears to be committed to matching litigation forces with the Sierra Club. Out of necessity, Shee Atika has sought to intervene in nearly every action that the Sierra Club has initiated. Shee Atika has been successful in its attempts to intervene. Once a party, Shee Atika has countered the Sierra Club's arguments and overturned the initial injunctive relief granted to the Sierra Club. When this has occurred, an examination of the Sierra Club's arguments revealed them to be without merit.

Shee Atika has been successful, but not without a great cost. Recently, Shee Atika has taken the offensive and has initiated actions dealing directly with the Sierra Club. These actions seek declaratory and injunctive relief in which Shee Atika has its title to the Admiralty Island land confirmed and quieted, and to enjoin the Sierra Club from any other, further frivolous challenges to Shee Atika's titles and rights.

A commitment to litigate each and every action and issue will result in the consumption of a massive amount of time, manpower, and money. Some of the current cases have been ongoing for almost 2 years, and in other cases it may be several years before final resolution is obtained. It is clear that the Sierra Club strategy is designed to wear Shee Atika down by a process of attrition.

Sealaska recognizes the desire of the people of Angoon to maintain and protect their village lifestyle, which requires significant use of the subsistence resources of Admiralty Island. I personally believe very strongly, however, that the legitimate lifestyle and subsistence needs of the Angoon people are being used to an unfair and obnoxious degree by the Sierra Club to serve its own end. Nevertheless, any resolution of this matter must recognize and be responsive to the subsistence needs of the residents of Angoon, as they may be affected.

In March 1983 the State of Alaska Department of Law asked the Mediation Institute to talk with the parties to the dispute about negotiating a settlement. The institute did so, and was asked by all three primary parties to explore settlement possibilities. The propositions before the parties were framed as follows:

For Shee Atika the question is: What mitigation measures might be acceptable to the Sierra Club and Angoon which would enable Shee Atika to develop and harvest its lands on Admiralty Island?

For Sierra Club and the people of Angoon the question is: What lands off Admiralty Island within the Tongass Forest would Shee Atika accept as an exchange for their interests on Admiralty Island?

Ground rules for negotiations were discussed but not agreed upon by all parties. In the absence of such ground rules and an adequate empirical basis for discussion, the key parties did not come to the table.

Sealaska Corp., recognizing the variety of interests in the dispute, including its own, sought to provide some help. After meeting with Shee Atika and Angoon, Sealaska, in cooperation with Kootznoowoo, Inc.—the village corporation of Angoon—established a study group. Sealaska was represented by myself, Robert W. Loescher. Sterling Bolima represented Kootznoowoo, Inc., and Susan Ruddy of the Mediation Institute was asked to participate as a neutral member in order to assure a balanced effort. The group's purpose was to define settlement possibilities, to explain generally the steps which would be required to accomplish such possibilities, to compile and present the quantitative information that is available relating to each possibility, and to offer this information to the parties for their review and comment.

Senator, as a part of this testimony Sealaska Corp. wishes to present a copy of "A Study Of Potential Settlement Options Related To The Dispute Over Shee Atika's Ownership And Development Of the Cube Cove Land On Admiralty Island, Southeast Alaska." This work represents the effort of Sealaska to put into focus the spectrum of settlement possibilities and develop specific proposals for consideration. This document does not totally represent the views of the Admiralty Island study group, nor does it necessarily represent the views of the Sierra Club, the people of Angoon, or Shee Atika. This study is being provided to the involved parties in an effort to promote discussion toward resolution of the present dispute.

The study identified three settlement themes: The first one was mitigation. The second one was exchange of the Cube Cove properties for other forest lands; and the third one is the purchase of the Cube Cove properties and cutting rights. Under these themes a total of 14 options were developed. These options consider concepts such as remaining on Admiralty and harvesting timber under restrictive management guidelines; or an exchange for the Tongass National Forest Lands, native lands, or State lands; or a purchase of Shee Atika's Admiralty Island property.

A total of 119 Tongass National Forest Land management units consisting of over 951,000 acres of commercial forest land were compared with Shee Atika's Admiralty properties. This comparison evaluated the timber volume and operating characteristics of the Admiralty properties with other possible exchange lands. Based upon these evaluations, sites were classified as either good or poor exchange possibilities.

Although evaluation and recommendation of exchange sites occurred, the report did not recommend or identify any preferred settlement options. This can occur only between the involved parties.

Now that we have advanced this study into the public arena, we must caution the Congress and others not to attach too great a value to what we have done. The effort to date is meaningless unless a way is found to encourage broader, compelling involvement of the public and the parties in these matters. As of this time, with regard to this study effort, the protagonists have stated, "* * * do what you are going to do. If it makes sense, then we will talk further with you."

Additionally, what we have seen as of this date is that there is no priority among any institutions of Government for this matter. As for Sealaska Corp., it is felt that our corporation should not and cannot proceed too much further to expend corporate funds, manpower, and goodwill, unless there is evidence of a compelling public interest and a resolute commitment to follow up and settle the complex array of scientific, legal, historical, traditional, and emotional issues before us.

It should be further noted here that Sealaska Corp. has a self-interest as the owner of the subsurface estate. Our corporation must also be recognized and treated fairly in this process with respect to our exploration, development, and production of materials which have been shown to exist in and about our ownership. In this regard, Sealaska Corp. is willing to formulate with the proper responsible governmental entities and other parties, acceptable criteria for exploration, development, and production of minerals on its Admiralty Island properties, or is willing to advance proposals to exchange its subsurface interests for locations elsewhere on the island or for some other locations in southeastern Alaska.

In conclusion, Sealaska Corp. has participated and is prepared to participate in a continued mediation effort, legislative solution, or in other options the Government might suggest. We emphasize that if these matters are worth pursuing, the baton must be passed to the Government to take leadership by providing legislative direction, administrative staff support, and such financial assistance as may be necessary. Resolution can only be meaningful if sufficient public interest exists to make this a priority in the activity of the Government.

We appreciate your interest in these matters, and hope that Congress can provide clarification of those national interests in Admiralty Island where they conflict with the intent of Congress in the Alaska Native Claims Settlement Act. We are hopeful that these proceedings will result in a final beneficial resolution which will permit both Shee Atika, Inc. and Sealaska Corp., on behalf of their Native shareholdings, to enjoy and use their lands and resources without restraint beyond the normal operation of law and regulation, thus completing the promise made in the Settlement Act.

Senator **Murkowski**. Thank you, Mr. Loescher. Do you have statements from Mr. Harris and Mr. Eisen?

Mr. **Loescher**. No, sir. They are here for my technical assistance.

Senator **Murkowski**. I very much appreciate the completeness of your statement.

I am first curious, Mr. Loescher, as to whether or not it is the attitude of Sealaska, as the regional corporation controlling the subsurface rights to the land and really the dominant leader and spokesman, if you will, on a regional corporate level, as to your particular attitude to statements to whether Shee Atika should be left to sink or swim by its own decision to not move off Admiralty Island. I think it is recognized by those who have followed this hearing, that when the monument was set up, that the same legislation gave Shee Atika the opportunity to select lands and they did.

I am leading to a specific question, Mr. Loescher. Do you feel that there is an obligation on behalf of the Government to make sure Shee Atika does not sink just because they want the land that the Government gave them and that they selected.

Mr. **Loescher**. Mr. Chairman, you have asked a multifaceted question. I will speak for Sealaska first, and then comment on the other aspects.

Sealaska Corp., as you know, is a private corporation, but we evolved out of the Alaska Native Claims Settlement Act so our company in effect has more of a broader responsibility when it comes to the issue of settling the land rights of the southeastern Alaska Natives. In fact, in the Alaska Native Claims Settlement Act there is a provision, called section 14(c)(5), under which for a period of 10 years we were responsible for working with each of the village and urban corporations on how they selected and planned to develop their lands.

That provision has since lapsed, and we no longer have that reponsibility for the other corporations but our company, as you can see, has invested over $4 million. Our board of directors has been constant in its support of Shee Atika in their endeavors to secure their land title and to be able to get started in their corporation and to use their lands. Therefore, our commitment continues to protecting the land rights of Alaska Natives.

With respect to the Sierra Club position, Senator, our company feels that it would be a tragedy if the Sierra Club was successful in diminishing or preventing Shee Atika from its land rights and the use of its private property.

Senator MURKOWSKI. Its existing land rights? I assume you are speaking of the land rights on Admiralty?

Mr. LOESCHER. No, sir. Whatever land rights Shee Atika is finally willing to accept, or if it wishes to stay on Admiralty, how it wishes to develop and use its land rights as it may presently exist. Sealaska Corp. feels, and we have advanced—Senator, I would just like to comment that we did not know you were going to have your hearing until about a month ago. We have developed this study over the last 3 or 4 months prior to notice of your committee, so we have been working to try to figure out a way to settle this dispute on our own accord.

We feel that no settlement can be achieved unless the Government is also involved. I might say, Senator Murkowski, that we have had very little support from the U.S. Forest Service in the formulation of these options that we have advanced here today. We have used a lot of their technical data, but there is a reluctance on the part of the Department of Agriculture and the Forest Service to pursue any of these exchanges, because it has other commitments to the Congress which it feels it must administer without trying to deviate and trying to take up this matter.

We feel, Senator, that unless there is some compelling reason, and by resolution of this committee or an act of the Congress or some kind of intent by the Congress, that there will not be any priority given in the Government for trying to settle this. We need some way to get them moving.

Senator MURKOWSKI. Well, it can be construed that the Government has already basically tendered its responsibility in offering and Shee Atika accepting the land on Admiralty. We have seen the litigation occur, in which you have certainly played a role as more than an interested bystander in assisting Shee Atika. However, we have heard witnesses that have addressed this committee, stating that we would be setting a dangerous precedent to assist the status of Shee Atika; that they should row their own boat; that they made their selection and should be held accountable. Now I am asking you if you agree with that.

Mr. LOESCHER. No, Senator, I do not think I do.

Senator MURKOWSKI. Thank you.

In your concluding remarks, you indicated and submitted for the record your efforts at mediation. I gathered that there is no particular area of general agreement that is likely to be pursued other than, as you suggested, that the Government intervene ultimately. Is that a correct conclusion? You have attempted, and it is still open, but you do not have an agreement yet on the exchange?

Mr. LOESCHER. Senator, I would like to characterize it as that we have been working to study the possible options of mitigation, and I might just explain what this study contains in a very short, few words. The study contains two aspects: one, studying the mitigation measures that might be taken to allow Shee Atika to harvest on Admiralty.

Basically, we have studied, using the Forest Service guidelines in all respects, mitigation measures to allow for fisheries, wildlife, and recreation potentials to be protected, and we have designed, using assistance of the Forest Service guidelines, mapped areas and identified areas within the Shee Atika ownership that would be impacted by those three categories. Then we have applied the national forest management regulations on harvesting procedures to the Shee Atika lands.

We found that a large portion of the Shee Atika lands would be affected by mitigation measures, and the cost to the Government or somebody would be in the range of $50 million to $60 million to offset the costs for the application of these mitigation measures to Shee Atika lands, and to allow them to own and use their lands under these criteria.

Then, Senator, the other part of the report designates a number of land exchange procedures that could be used, and we have laid them out in order that people could see in writing the range of possibilities of exchanging these lands.

Senator MURKOWSKI. Then it is fair to say, since this statement is so new—October 28—that the parties concerned have not really had a chance to digest and negotiate whether there is room for a settlement or not. Is that correct?

Mr. LOESCHER. Yes, sir. That is correct.

Senator MURKOWSKI. OK. Well, we would certainly hope that they will examine it. I do not want to give you any encouragement, however—in my opinion, and speaking not as the chairman of this committee but as a member of the Alaska delegation—that it is unlikely that you can expect special interest legislation to be introduced which would, in effect, make Forest Service timber available on an exchange basis. Not that it is impossible, but then we would be holding hearings with other witnesses in violent objection to that based on their interpretation of what the adequacy of the allowable cut is and what the adequacies of the contingency areas are.

I am not suggesting that it is impossible, but you are a forester, Mr. Loescher, and you know how strongly feelings exist in Alaska as to the status of the South Tongass Forest. I think I would be derelict, as a member of the delegation as opposed to a member of this committee, to suggest that hopes are high for that to be a readily available alternative. It would be a hotly contested debate, and in fairness to the parties concerned, particularly Shee Atika, I would not want to see their hopes rise to the point where they could consider that as a readily attainable alternative.

Mr. LOESCHER. Senator, could I make a comment in that regard?

Senator MURKOWSKI. Surely.

Mr. LOESCHER. Senator, Sealaska Corp. does appreciate your observation. I would like just to advance very briefly the logic of why we constructed this paper this way. We were confronted with that same concern, that the timber industry wanted to maintain the remaining land base to provide for the 450 million board feet of timber a year. Their existing contracts, the contingency areas, all of those things we understand.

We said to ourselves, "Notwithstanding those requirements of the Government, and also notwithstanding the designation of conservation areas, what lands might be available to construct some kind of exchange?" Therefore, we identified not only lands that would impact existing contracts and contingency areas and all that, but we also identified some wilderness or conservation lands that might be used, so we are trying to be very neutral. We are trying to advance the best objective observation of how this land exchange might take place, recognizing that there would be impediments along the way.

Senator MURKOWSKI. Has this been available to the Sierra Club Legal Defense Fund?

Mr. LOESCHER. Yes, sir. We do recognize——

Senator MURKOWSKI. Do you know if they would be willing to support any wilderness changes?

Mr. LOESCHER. Senator, the conversations that we have heard today are the only ones that I have heard, but I would like to include in my comments, Senator, we do recognize though that if some kind of mitigation or exchange is going to occur, the Congress is the one that is going to have to make the cut.

Senator MURKOWSKI. Well, now, just a minute. I want to make sure that we do not leave this hearing with the suggestion that it is Congress' responsibility to resolve this issue. Congress can only relate to this, in my opinion, through legislative changes. Now that does not happen very rapidly around here, as you and I both know.

Mr. LOESCHER. That is correct.

Senator MURKOWSKI. The procedural process is agonizing. It is like giving birth, and oftentimes the results are not nearly as rewarding. Therefore, I want to caution you, and I am not going to leave the witnesses for Sealaska, Shee Atika, Kootznoowoo, or the village involved here with the impression that Congress is necessarily going to be the answer. What Congress is attempting, and again I will stipulate, is to examine why its will has not been carried out to date. We understand the realities of litigation which have occurred but, by the same token, I just think it unfair to put the burden back on Congress because, whether you agree or disagree, there are those who have testified at this hearing that they feel Congress should stay absolutely out of it, which implies that the litigation should continue and somebody win or lose the litigation.

I would totally support a settlement but if it involves congressional, legislative activity, then the plot thickens. We begin to advance more players, and the most logical settlement, the quickest method would obviously be for the parties concerned to get together and work out a settlement, with the assistance of Sealaska, because you are very much a part of that. I know that you do not have any lands that you can exchange because of the internal structure, the way the timberland was divided. However, if we get Congress in through legislation, the time frame is going to be indeed an extensive one.

I guess that would present my next question: Assuming that this thing goes on the way it is going on now, with unlimited litigation or continued litigation—let us be objective—is Sealaska prepared to continue to support it or abandon it?

Mr. LOESCHER. Senator, unless there is a compelling public interest which would give us the incentive to continue, our company is very concerned whether we can continue to expend corporate funds, dedicate manpower, and use our goodwill to continue to help to resolve this matter.

Senator **Murkowski**. Are you prepared to write off your investment, then?

Mr. **Loescher**. Senator, our company was born out of the Alaska Native Land Claims Settlement Act. We continue to support Native land rights and benefits to our people, and we feel in the case of Shee Atika that the actions that have occurred have diminished the land rights of Shee Atika. We feel very strongly, Senator, that the settlement with the Sitka Natives has not been achieved by the Congress. Since there are competing public interests, which this Congress needs to adjudicate, we feel that the settlement has not been completed with those people.

Senator **Murkowski**. Well, you did not answer my question, Bob: If this litigation continues, are you prepared to support Shee Atika's position, or are you prepared to basically write off your investment?

Mr. **Loescher**. Senator, we will not abandon our own people.

Senator **Murkowski**. Thank you, Mr. Loescher. That could be taken either way, you know. They are all your people. I assume that was your intention when you gave your answer.

Have you had to litigate over subsistence rights of any adjacent villages in southeastern Alaska?

Mr. **Loescher**. No, sir.

Senator **Murkowski**. How many log dumps are Sealaska involved in, in the sense of being the marketer for the products which are shipped and exported outside Alaska?

Mr. **Loescher**. Senator, we have seven log dumps and one dock facility.

Senator **Murkowski**. One dock? Where is your dock?

Mr. **Loescher**. At the community of Klawock, AK.

Senator **Murkowski**. Klawock? That is a community of what, 800 or 900 residents?

Mr. **Loescher**. Yes; Craig and Klawock are 7 miles apart.

Senator **Murkowski**. You have a dock there? How close is your logging operation to Klawock?

Mr. **Loescher**. It ranges from 7 miles to 25 miles.

Senator **Murkowski**. 7 miles to 25 miles. Is Klawock, in your professional opinion as a Native resident of southeastern Alaska, partially dependent or somewhat dependent on subsistence utilization of the land for the traditional purposes of hunting, fishing, crabbing, and so forth?

Mr. **Loescher**. I believe that in that community the people are partially dependent on subsistence resources.

Senator **Murkowski**. Do you have any opinion as to whether or not the location of your dock in Klawock or the log dump within the 7-mile area has had any impact on the subsistence use on those areas?

Mr. **Loescher**. Absolutely.

Senator **Murkowski**. Would you please indicate specifics?

Mr. **Loescher**. Senator, our people are very environmentally sensitive. Sealaska, in working with the communities and the corporations of Craig and Klawock, we were very concerned about the impact of dumping of our logs into the water in front of the Klawock River, which is a major salmon river in that area, and literally in front, at the mouth of the river, we would be dumping the logs, since that was the only place that we could identify to do so.

Therefore, our corporations got together and worked with the State of Alaska, and we put together a dock facility to provide for dry-land storage of logs and transfer of the logs, and some dumping into rafts in a very coordinated, organized manner. The dock cost us over $9 million to do that, so we made an environmental investment which was compatible with the subsistence needs of our people.

Senator MURKOWSKI. How much did the dock save you in loading, as opposed to loading from the water?

Mr. LOESCHER. We have probably benefited, in the neighborhood, over time and over volume, of $10 to $25 per thousand board feet.

Senator MURKOWSKI. Therefore, it was both an economic decision and an environmental decision because it is obvious that someone can load from a dock faster and more economically.

Do you believe that a log dump in Cube Cove will have a detrimental effect upon the subsistence utilization by the residents of Angoon, knowing through previous testimony of the general use of Cube Cove as a subsistence point?

Mr. LOESCHER. Senator, I believe that a log dump or a log transfer facility which would handle barge loading of logs would not be detrimental to the subsistence requirements of the Angoon people or other people. I qualify that, we are supportive of the Alaska Department of Environmental Conservation's findings and their mitigation measure recommendations that they have advanced.

Senator MURKOWSKI. In what other villages are you operating or buying logs, in effect, other than Klawock?

Mr. LOESCHER. Senator, we represent eight or nine of the village and urban corporations in our region. Off the top of my head, Goldbelt Corp.——

Senator MURKOWSKI. Where are they logging?

Mr. LOESCHER. They are logging at Hobart Bay, which is east of Admiralty Island.

Senator MURKOWSKI. Yes; south of Juneau.

Mr. LOESCHER. We represent the Kake Tribal Corp. at Kake, AK. We represent Huna Totem Corp. at Hoonah area; Shaanseet at Craig; Klawock Heenya at Klawock; Haida Corp. in the Hydaburg area; Klukwan, Inc., who owns property south of Prince of Wales Island at Long Island; and Capefox Corp. at Saxman, AK.

Senator MURKOWSKI. It is fair to say that the villages of Hoonah, Kake, Hydaburg, are all dependent very much on a similar subsistence lifestyle being available to them as part of their heritage. I assume that when we talk about the dangers of just what a log dump will do, we recognize that it is going to have some effect, but whether it is going to be substantially detrimental to subsistence lifestyles is a matter of degree and interpretation.

Mr. LOESCHER. Yes, sir, that is correct.

Senator MURKOWSKI. I see you have Mr. Harris with you, who I understand is an environmental engineer, and I assume he would basically agree with that: It is all a matter of examination and perception and care and determination and so forth, right?

Mr. **Loescher**. Senator, he is a fisheries biologist, and I will let him speak for himself.

Mr. **Harris**. Yes, Senator, I think that log transfer facilities can be designed and built such that the subsistence resources can be protected. I think you can maintain and protect water quality using proper engineering procedures.

Senator **Murkowski**. It is kind of interesting, you know, to relate and reflect upon the lack of coordination and understanding and cooperation and harmony between the logging industry and the fishing industry. As you know, Bob, in southeastern Alaska the minute a fish run drops, why, the logging industry is first laid on the line.

I was amused even to note that the king crab disappearance is being blamed to some extent on the logging industry associated with Kodiak and Afognak, particularly Afognak Island, and of course the irony there is, the logs do not go in the water. The logs are put on a transfer site and loaded directly onto a barge. The barge is then taken out to the ship and the ship is loaded. Still there are some that would generalize and say that the logging industry is responsible for the king crab disappearance.

I know a great deal has been made of the subsistence issue with regard to the village of Angoon, and I can appreciate that. However, again I think it has to be kept in proportion to the land mass, the number of people, the areas that are available, and the anticipated environmental degradation that would occur. We have seen a long history of log dumps. Some are better than others. Care is better now than it was previously and you reach a realization of the highest and best use. Certainly everything you do is a compromise and rights have to be protected.

I would like to ask you if Sealaska has ever been sued by the Sierra Club or the Sierra Club Legal Fund or anyone else over its log transfer facilities?

Mr. **Loescher**. No, sir.

Senator **Murkowski**. That is indeed interesting. I guess you must have been doing a pretty good job.

Mr. **Loescher**. We try to be a responsible corporate citizen, Senator.

Senator **Murkowski**. Therefore, I guess the uniqueness of Admiralty Island is really what it is all about. Do you have any knowledge of the previous logging that occurred on Admiralty Island over the past 100-some-odd years?

Mr. **Loescher**. I have only been alive a short time but I have seen some logging on Glass Peninsula, which is on the east side. I have seen some logging down in the Pybus Bay area on the southeast side, around the lower side, and also I have seen second growth timber around the Hawk Inlet area and down by Tyee, where the canneries used to be. They are very small. The regrowth is very fantastic.

Senator **Murkowski**. Do you have any observations to make whether it has had—in your observation as a man who deals in timber and has a concern for the regrowth of a renewable resource to the Native people of southeastern Alaska—whether this previous logging has done irreparable harm to that portion of Admiralty Island where the logging occurred?

Mr. LOESCHER. Senator, there is a lot of dispute over deer habitat and impact to fish streams and whatnot. Our company is involved with the U.S. Forest Service and the State and other people to study these impacts and try to come up with mitigation measures or plans to lessen the impact. We feel that that is the best way to deal with those matters.

Senator MURKOWSKI. Has the Corps of Engineers ever required any of your log dumps to prepare environmental impact statements before permitting the operation of those facilities to occur? I assume you speak, really, for the largest user of native timber, log dumps, native logs and so forth, in Akaska.

Mr. LOESCHER. Yes, sir. That is correct. No, sir, we have not.

Senator MURKOWSKI. How do you explain, then, the extraordinary requirements associated with Shee Atika's attempt to get a permit processed, when you people evidently go through the regulations and, after a reasonable time, get your permits and go into operation?

Mr. LOESCHER. Well, Senator, you know, setting aside the issue of subsistence, the real issue is the national interest in Admiralty Island as a forest wilderness and a monument. I believe that the Sierra Club and the people of Angoon are adamant in preventing logging on that island, and that——

Senator MURKOWSKI. Under any circumstances?

Mr. LOESCHER [continuing]. Under any circumstance, and they will continue to litigate or challenge in every forum they can to prevent that.

Senator MURKOWSKI. Therefore, from that generalization, I would assume that the only way you foresee a settlement is that they would basically give up their 23,000 acres on the Island of Admiralty?

Mr. LOESCHER. That is not correct, Senator.

Senator MURKOWSKI. Well, that would be the conclusion I would have to come to, if you say that they are never going to relent. I cannot come to any other conclusion.

Mr. LOESCHER. No, sir, Senator. I would hope to draw your attention to our paper, where we study the mitigation costs of staying on the island and then the options for an exchange.

Senator MURKOWSKI. Yes; but you made the statement—and I think I do not disagree with you, I think that may very well be the case—that those who are opposed are prepared to oppose it under the concept that no timber shall be cut on Admiralty Island, period. If that is indeed a valid premise, then one has to assume that the alternative settlements will be land or value somewhere off Admiralty Island. That is what I am asking: Do you believe that, too?

Mr. LOESCHER. Sealaska has not drawn that conclusion, as of this date.

Senator MURKOWSKI. As of this date. Do you, as a representative of Sealaska, have any special vision that you might share with us as to whether or not you feel that unless somehow there is developed a compromise off Admiralty, that this thing will never be settled?

Mr. **Loescher**. Senator, as we stated in our testimony, unless there is compelling public interest to make this a priority in the Government, this matter will not be settled.

Senator **Murkowski**. Well, I think we have come to the same conclusion, Mr. Loescher. Assuming the parties cannot agree, we have a lot of work ahead of us one way or the other.

Do you have any other case within the Sealaska area involved in this kind of a dispute in which families of the same name are at odds over an issue that has deepened to the point where it is pretty serious, a good deal more than in a family squabble?

Mr. **Loescher**. No; there is not any other problem like that.

Senator **Murkowski**. Has Sealaska ever been required to receive an NPDES permit, either for the disposition of its logs in navigable waters of the United States or for storage, transfer facilities?

Mr. **Loescher**. No, we have not, Senator. The only time we get into those kinds of permits is in our fisheries business.

Senator **Murkowski**. Well, I think that we have attempted to develop a record here. I appreciate the willingness of all the witnesses.

Again, I want to expand momentarily, in the few minutes left. The purpose of the testimony was to examine why the Government's legislative intent has been stifled. We received testimony from the intervening parties and their concern over, (a) logging, and (b) subsistence. We have heard the individual interpretation of experts as to just what effect logging will or will not have on the residents of Angoon and that village corporation, and about the long-term fallout from any logging on Admiralty Island.

We have also examined the fact that logging has existed to some extent over 100-some-odd years. I think Shee Atika has spoken of its entitlements that were created, not as a gift but as a settlement, a valid contractual settlement between the U.S. Government and the shareholders of Shee Atika. Certainly that property settlement created rights in and to the people of Shee Atika.

We have heard from the people of Angoon, whose rights basically intersect with the rights to subsist on the land, and I certainly respect that. The administration and the involved Government agencies have assured us that basically Government supports Shee Atika's position, and that there are no other alternatives. However, the Sierra Club has asserted that it is only interested in seeing that the environmental laws passed by Congress are enforced, thus protecting the public's interest. That is certainly a right of the Sierra Club and its legal defense fund.

There has been little recognition of the public's interest in resolving this process that has been so expensive in money and lost opportunity and in human frustration.

Sealaska, I want to commend you and your associates. You have brought some proposals to the committee that bear examination. I am sure that both parties are anxious to begin the examination process. I am not prepared to offer any recommendations as to the substance because that is between the two parties. I simply support the effort and commend you for your dedication, as really the senior parent of your people through your regional responsibility, to attempt to resolve this very serious issue that has been splitting your people.

I have to generalize and observe that on both sides, while the influence of our laws requires the examination by counsel, oftentimes that extends and instead of soothing the wounds, expands the wounds. I simply point that out to indicate that oftentimes, people left alone to their own devices can come to compatible means. Sometimes, when extensive legal input is brought into the picture to protect their rights, the parties seem to get further away from solutions. I do not mean that to be critical of the legal profession. It is just an observation from someone who does not happen to be an attorney.

There are longer term solutions, however, and we are going to evaluate them. The ability of Shee Atika to continue to pursue its interests is an important question. Government has to ask itself, if, as a consequence of the law and the transfer of the land and Shee Atika's acceptance, Congress' responsibility ends there or whether Congress has the responsibility in the entity that it has created, and whether that responsibility must be fulfilled in some manner or form. I believe that there is a responsibility to ensure that Shee Atika is able to continue as an entity.

I do not have a solution. Within the time that this record remains open we will solicit input, suggestions, alternatives for settlement. Upon the conclusion of that 2-week timeframe, we will hopefully have this resolved by the parties concerned, through your efforts and the efforts of Sealaska, Mr. Loescher.

If that is not the case, I intend to, through the examination of the record, pursue some methodology that will ensure that Shee Atika continues to be a legitimate entity. I think that is a responsibility of the Congress of the United States. I do not feel it is establishing an unrealistic precedent because I think, we have a unique set of circumstances. As you pointed out in your testimony, Mr. Loescher, one of your other log dumps has been subjected to what Shee Atika has been attempting to do. So obviously, this is a very, very special case.

You have not had litigation in the numerous areas that you have opened up to timber harvesting, many of which previously had not been open virgin areas of first-growth timber containing not only deer habitat but adjacent to salmon streams. I commend you for your commitment to observe the very best forest practices available but the realities are, here we are dealing with a very unique set of circumstances that have occurred to a very, very small group of Native Alaskans. They obviously have limited means. To insure their survivability an examination of alternatives must take place.

With that general review, I will again thank those witnesses who have traveled a great distance at great expense. I would urge the Sierra Club to be objective in attempting to describe the realities of the Alaska that we have lived in, and that we know and love. General statements such as have been made and entered into the record I think are a bit inflammatory.

I would urge a very responsible approach. There is no question in my mind that some of the statements and letters that are in this record are a bit sensational. We really do not need that because it does not create a true and a respectable position for what is occurring in Alaska today. Obviously there are extremes on both sides, and we need cool heads that make accurate statements to judge fairly the merits of what is occurring.

With that, I would indicate again that the record will be open for a period of 2 weeks. I thank you for coming. I think we have established a record to proceed from.

Last, I would urge that if there is any possible way, the people of Shee Atika and the people of the village of Angoon resolve their differences. I might suggest they might try it among themselves first and then, if that does not work, continue to pursue their interests with counsel. Thank you.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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November 1, 1983

Senator Mark Andrews
Chairman, Select Committee on
  Indian Affairs
Hart Senate Office Building
Room 838
Washington, D.C. 20510

Re: Select Committee Oversight Hearings,
Alaska Native Claims Settlement Act
and Shee Atika, Inc., November 2, 1983

Dear Chairman Andrews:

Pursuant to the Statement of Mr. V.W. Kaczynski for the oversight hearings, we are submitting to your staff copies of the following CH$_2$M Hill studies:

✓1. Cube Cove and Vicinity: Baseline Ecological Field Studies (September 1982)

✓2. Cube Cove Oceanographic Study (September 1982)

✓3. The Marine Benthic Infauna of Cube Cove (September 1983)

✓4. Existing and Potential Opportunities for Traditional Marine Subsistence Activities in Cube Cove, Admiralty Island (August 1983)

✓5. Wildlife Impact Assessment for Proposed Log Transfer Facility and Logging Operations for Shee Atika lands, Admiralty Island (October 1983)

6. Assessment of Potential Impacts on Subsistence Use from Proposed Log Transfer Facility and Logging Operation on Lands Owned by Shee Atika, Incorporated, Admiralty Island (October 1983)
7. Socioeconomic Impact Assessment for Proposed Log Facility and Logging Operation on Lands Owned by Shee Atika, Incorporated, Admiralty Island, Alaska (October 1983)

Because of the cost of duplicating, we can only submit one copy of each.

Sincerely,

Richard Anthony Baenen

Enclosure
[Retained in Committee files.]

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November 17, 1983

HAND DELIVERED

Senator Mark Andrews
Chairman
Senate Select Committee on
Indian Affairs
United States Senate
Hart Building, Room 838
Washington, D.C. 20510

Re: Oversight Hearings on Implementation of the Alaska Native Claims Settlement Act and Shee Atika, Inc., November 2-3, 1983

Dear Chairman Andrews:

On behalf of Shee Atika, Inc., we submit the attached material for inclusion in the Committee's record of its Oversight Hearings on Implementation of the Alaska Native Claims Settlement Act and Shee Atika, Inc.:

(1) Consolidated Financial Statements for Shee Atika, Incorporated, and Subsidiaries, for the years ended December 31, 1982, and 1981, and Auditor's Opinion, prepared by Deloitte, Haskins & Sells, dated September 21, 1983.

(2) Copy of Affidavit of Dr. Verne F. Ray, dated October 19, 1983.

(3) Recommended decision of Ray Pastorino, Hearing Officer, Alaska Department of Environmental Conservation, including findings of fact, in the matter of Certificate of Reasonable Assurance issued to Shee Atika, Inc., for a log transfer facility at Cube Cove, Admiralty Island, NPACO Number 071-OYD-2-810133-Chatham Strait 90, dated July 7, 1983.

(4) Decision of Richard A. Neve, Commissioner, Alaska Department of Environmental Conservation, dated August 8, 1983, in the matter of the Certificate of Reasonable Assurance issued to Shee Atika, Inc., for a log transfer facility at Cube Cove, Admiralty Island, NPACO Number 071-0YD-2-810133, Chatham Strait, 90.

(5) A letter dated November 7, 1983, to the undersigned from Dr. V. W. Kaczynski, Director, Environmental Sciences, CH_2M Hill.

(6) A letter dated November 11, 1983, to the undersigned, from Jacquelyn R. Luke, Esq. (This letter is being mailed directly to the Committee.)

(7) A letter dated November 17, 1983, to the undersigned from Roger Snippen, President and Chief Executive Officer, Shee Atika, Inc. (This letter is being mailed directly to the Committee.)

(8) Affidavit of Donald Soukup, dated October 25, 1983.

(9) Affidavit of Donald Soukup, dated July 19, 1983.

(10) Petitions collected in Sitka, Alaska.

(11) Copies of relevant pages from a Memorandum in Opposition to Motion for Preliminary Injunction filed by the Sierra Club in Shee Atika, Inc. v. Sierra Club, United States District Court for the District of Alaska, at Juneau, Number J-83-0006 Civil, dated April 18, 1983.

(12) Copy of a letter dated October 25, 1983, to Roger Snippen, President, Shee Atika, Inc., from Cletus L. Von Tersch, General Manager, The Travelers.

(13) Copy of a letter of January 26, 1982, to Mr. James Caruth, Alaska District, Corps of Engineers, from Mr. Herman Kitka, Sr.

(14) Copy of a Memorandum of Law in Support of a Motion to Stay Consideration of Shee Atika's Motion for Summary Judgment filed by the Sierra Club on October 25, 1983, in Shee Atika, Inc. v. Sierra Club, United States District Court for the District of Alaska, Number A-83-234-Civil.

(15) Copy of Memorandum and Order entered June 27, 1983, by Alaska Superior Court Judge Rodger W. Pegues in City of Angoon and Sierra Club v. Alaska Department of Environmental Conservation and Shee Atika, Inc., Superior Court for State of Alaska, First Judicial District, No. 1JU-82-1919 Civil.

(16) Copy of Memorandum and order in above-referenced case entered by Judge Pegues on June 28, 1983.

(17) Copy of letter dated August 23, 1982, from the Sierra Club Legal Defense Fund to Mr. Malcolm Baldridge, Secretary of Commerce.

(18) Copy of a letter of June 28, 1982, from Sierra Club Legal Defense Fund to Commissioner, Alaska Department of Environmental Conservation.

(19) Copy of a letter of June 28, 1982, to John O. Marsh, Secretary of the Army, from Sierra Club Legal Defense Fund.

(20) Copy of Memorandum dated November 16, 1983, to the undersigned from Pierre J. LaForce, Esq.

(21) Copy of Reply to Opposition to Motion for Stay filed November 9, 1983, by the Sierra Club in *Shee Atika v. Sierra Club*, United States District Court for the District of Alaska, No. A-83-234 Civil.

(22) Copy of CH_2M Hill "Freshwater Biology Impact Assessment for Shee Atika, Inc., Lands, Admiralty Islands, Alaska," dated November, 1983.

Sincerely,

Richard Anthony Baenen

Enclosures
[Retained in Committe files.]
cc: Senator Murkowski (w/o encl.)
Attn: Jerry Reichlin
Roger Snippen (w/o encl.)
Ethel Staton (w/o encl.)

A STUDY OF POTENTIAL SETTLEMENT OPTIONS RELATED TO THE DISPUTE OVER SHEE ATIKA'S OWNERSHIP AND DEVELOPMENT OF THE CUBE COVE LANDS ON ADMIRALTY ISLAND, SOUTHEAST ALASKA

NATURAL RESOURCES DIVISION
SEALASKA CORPORATION
OCTOBER 28, 1983

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INTRODUCTION

With passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, Congress granted 23,073 acres of Admiralty Island to Shee Atika, Inc., the Sitka urban Native corporation, and created the Admiralty Island National Wilderness Monument. Shee Atika's right to own, possess and develop the Admiralty land since that time has been the subject of extensive litigation between the City of Angoon and the Sierra Club, and Shee Atika. This litigation involves a complex array of scientific, legal, historic, traditional and emotional issues that has and will take considerable time to resolve through the legal, administrative and permitting systems. As stipulated in ANILCA, Shee Atika plans to use the resources of the land for the benefit of its shareholders. The Sierra Club seeks to prevent Shee Atika from doing so in order to preserve the lands wilderness character. The City of Angoon seeks to protect the subsistence values of the land.

In March of 1983, the State of Alaska Department of Law asked the Mediation Institute to talk with the parties to the dispute about negotiating a settlement. The Institute did so, and was asked by all three primary parties to explore settlement possibilities.

Ground rules for negotiations were discussed but not agreed upon by all parties. In the absence of such ground rules and an adequate empirical basis for discussion, the parties did not come to the table.

Sealaska Corporation, the Regional Native Corporation with a variety of interests in the situation, sought at this point to provide some help. After meeting with Shee Atika and Angoon, Sealaska established the Admiralty Island Study Group and provided staff support. Sealaska was represented by Robert W. Loescher. Sterling Bolima represented Kootznoowoo, Inc., the village corporation of Angoon. Susan Ruddy of the Mediation Institute was asked to participate as a neutral in order to assure a balanced effort.

The Group's purpose was to define the spectrum of settlement possibilities, to explain generally the steps which would be required to accomplish such possibilities, to compile and present whatever quantitative information exists relating to each possibility, and to offer this information to the parties for their review and comment. This report is the product of the Study Group's work.

Sealaska Corporation owns the subsurface lands underlying Shee Atika's Admiralty Island properties. The efforts of the Admiralty Island Study Group, although recognizing this fact, did not consider how each of the proposed options will affect Sealaska Corporation's subsurface interest. Sealaska Corporation has, however, shown a commitment to participate in the efforts to resolve the Admiralty Island dispute and is willing to consider a settlement compensation package involving their subsurface interests.

DESCRIPTION OF CUBE COVE PROPERTIES

The Shee Atika Admiralty Island properties are located on the northwest side of the Island. Shee Atika's properties extend north from the Florence Lake drainage to Cube Cove. The Corporation's holdings include part of three west to east-oriented drainages, Lake Florence, Ward Creek and Lake Kathleen, and part of one north to south drainage, Point Hepburn, which includes Peanut Lake and Cube Cove. Cube Cove is the northern terminus of the Shee Atika properties and offers the only marine access point. Throughout this report the Shee Atika Admiralty Island lands will be referred to as the Cube Cove properties.

FOREST RESOURCE, PHYSIOGRAPHIC AND OPERATIONAL FEATURES

o Area	23,073 acres
o Commercial Forestland	89% of total land base
o Total Volume	746 MMBF (million board feet)
o Average Volume per Acre	33 MBF (thousand board feet)
o Species Composition	71% hemlock 29% spruce
o Total Value (land & timber)	$176,700,000

- Other Physical and Operational Features
  - Shee Atika's lands at Cube Cove consist primarily of valley bottoms. Elevations range from sea level to 2,000 feet, with the vast majority of the lands lying below 1,000 feet. Concentration of forestland holdings at lower elevations in Southeast Alaska is important for a couple of reasons, 1) soils at lower elevations, with the exception of muskeg areas, tend to be deeper than at higher elevations; consequently, they generally are the most productive lands for the purpose of growing timber crops and, 2) weather conditions at lower elevations are conducive to longer operating seasons.
  - Topographic conditions
    - Easy to moderate road building conditions.
    - Easy to moderate logging conditions using conventional systems (e.g. cable logging).

- Log Transfer Sites
  - Only one feasible site (at Cube Cove).
  - The maximum haul distance (via truck) to a log transfer facility at Cube Cove is approximately 25 miles.
  - Average haul distance of approximately 15 miles.
  - Moderate haul distance is offset by the need to develop only one log transfer facility for the total ownership.
- Additional features
  - Total ownership is made up of one compact tract.
  - Concentration of medium to high volume stands with relatively small amount (approximately 11% of total ownership) of noncommercial and nonforestland.
- Logging season - normal for Southeast Alaska, 8 months.
- Camps - only one needed.
- Logistics - Service by boat, helicopter and airplane. Exposed site limits airplane travel during winter months.

Fish and Wildlife

There are four first order streams flowing through the Cube Cove properties. Three of the streams are lake system streams draining Peanut, Florence and Kathleen Lakes. The fourth system is Ward Creek. Natural barriers downstream from the Cube Cove properties prevent access to these streams by anadromous fish. The USFS has previously studied feasibility of constructing fish passes around the barriers on Lake Kathleen, Ward Creek and Lake Florence. Although each appeared to be technically and economically feasible, the Alaska Department of Fish and Game (ADF&G) rejected passes that would open the Florence and Kathleen Lake systems to anadromous fish, since access by anadromous fish may impact resident fish productivity.

Florence and Kathleen Lakes have been classified by ADF&G as quality watersheds with high recreational sportfish values. Both systems also have very high visitor day use much of which is to take advantage of sportfishing opportunities.

The Cube Cove properties are reported to include high value deer and bear habitat. ADF&G evaluations of deer use noted significant use on the east end of Florence Lake. Further, ADF&G

advised that the northwest side of Admiralty Island (including the Cube Cove properties) contain significant populations of the largest (oldest) brown bear on the Island.

Current Use

Subsistence: The people of Angoon have stated that the Cube Cove area is critically important to them for hunting and fishing, and that their dependence upon these subsistence activities is traditional and essential to their way of life.

Recreation: There are three U.S. Forest Service cabins on the lakes in the Cube Cove area. During a recent one-year period, these cabins were used by 386 visitors, each averaging close to a four-day stay or approximately 1,544 visitor days. It is likely that others use the area but their use is not recorded.

National Interest: ANILCA defines national interest lands as those which "contain nationally significant natural, scenic, historic, archaeological, geological, scientific, wilderness, cultural, recreational and wildlife values. . . ."

It is clear from ANILCA legislation that the Admiralty Island Wilderness Monument is national interest land. The Cube Cove properties which are private inholdings in the Admiralty Wilderness might also be considered to have national interest values. Quantification of these values was attempted in order to consider the extent of compensation that may be necessary under various resolution options.

Determination of some national interest values could be examined in terms of replacement costs, others would have to be studied in a non-market context. Some could be valued using a travel cost or "willingness-to-pay" approach. All would require examination through one or more of these approaches. Due to the complexity and tangible nature of the values associated with national interest lands, it was determined that quantification of national interest values of the Cube Cove properties was beyond the purview of this study. The final settlement package, if any, would have to recognize these national interest values.

Sealaska Cube Cove Subsurface Interests

The subsurface estate lies in the important Cannary Formation which is host to massive sulfide mineralization. The same formation in the Greens Creek area to the north will eventually host a rich silver, zinc, lead, gold and copper mine to be operated by Noranda Mines. Evidence of this same type of mineralization exists at the Shee Atika/Sealaska lands already described.

The Sealaska Cube Cove subsurface estate has the potential to be another Greens Creek. Evidence of mineralization in outcrop and drilling on nearby claims has confirmed this potential. The estimated value of the Greens Creek Project is 700 million dollars with the potential for the orebody to grow as exploration progresses. If this same mineralization does extend on to Sealaska's subsurface estate, the only real differences to be expected would be in the ratio of metals to each other, not in the metals to be mined.

COMPENSATION CONSIDERATIONS

This section of the report reviews various types of compensation options that might be considered in compiling a settlement compensation package. The compensation options are discussed in a generic, nonspecific manner since it is difficult to develop more detailed compensation analysis until preferred settlement options, if any, are identified.

A very important element in developing a settlement package is to determine the real value of the Cube Cove lands. This value clearly includes the commodity values such as timber and land, but also includes amenity values, which are best described as national interest values. As discussued in the introduction, the complexity of determining national interest values is beyond the purview of this study. It is necessary to recognize, however, that the value of the Cube Cove properties is more than just the appraised commodity value. Therefore, the settlement compensation option analysis justifiably advances concepts of compensation in which the acreage and values received by Shee Atika under the exchange options exceed the acreages and appraised values of the Cube Cove properties. This same logic applies to the mitigation types of options in that additional compensation to Shee Atika, in excess of the actual cost, may need to be included since national interest values may be fully or partially protected.

Any settlement package and the associated compensation element would have to consider the real loss in revenues, asset values and increased operating and management costs to Shee Atika. The compensation element should also recognize that Shee Atika has already invested significant sums of money in the Cube Cove properties to realize the benefits due Shee Atika under the terms of ANCSA. These investments have included management costs, engineering, biological and oceanographic studies, litigation and substantial interest expense associated with efforts to commence harvesting timber on the Cube Cove properties. Any settlement package would have to take these investments in the property into account and to compensate Shee Atika for those nonrecoverable investments.

Shee Atika retains tangible assets on the Cube Cove properties. These assets have enabled the Corporation to borrow money and cover day-to-day operations and overhead expense associated with commencement of timber harvest operations. The consideration, by Shee Atika, of any settlement particularly those involving exchanges, may diminish Shee Atika's ability to secure operational financing until the settlement package has been ratified and any exchange lands are conveyed. Consequently, any serious consideration of settlement options would require a commitment by the Federal Government, and others, to maintain and cover Shee Atika's cash flow requirements during the settlement negotiations. Additional financial support would be required to cover Shee Atika's expenses associated with the evaluation of the settlement options and negotiation of a final settlement package.

Following is a summary of several compensation options which the appropriate decision-makers may wish to consider in attempting to resolve the Cube Cove controversy. Possible options are noted only in very general terms.

SHEE ATIKA CUBE COVE LANDS: COMPENSATION OPTIONS

Settlement Option	Means of Compensation	Comment	Likelihood of Acceptance By Principal Parties
Conditions under which logging would be acceptable at Cube Cove	Lump-sum or annual cash settlement to offset cost of land development and management restrictions which are imposed.	Specific land development and management restrictions will need to be spelled out in detail before an appropriate and acceptable cash settlement could be estimated.	Acceptability to Shee Atika will depend on type of restrictions imposed and amount and form of cash settlement. May be unacceptable to some parties as long as resource developmen activity is permitted - regardless of the mitigative measures employed.
Land Exchange	Acre for acre exchange	Does not take into account other important considerations such as value, additional compensation for costs incurred to date by Shee Atika and future costs associated with affecting an exchange. Beyond a minimum acreage which is acceptable to Shee Atika, the amount of acreage to be received in exchange for the Cube Cove lands, is less important than the value of the property received.	Low likelihood that Shee Atika would find acceptable, but ultimately would depend on value received.
	Acreage received 25 to 50% greater than acreage of Cube Cove lands.	Does not address value of property to be received.	Acceptability to Shee Atika would depend on value received. May be unacceptabl to one or more of the other parties.
	Value for value exchange (exchange of property only)	Does not address additional compensation for costs incurred to date and future costs associated with affecting an exchange.	Low likelihood that this option would be acceptable to Shee Atika.
	Value received 25 to 50% greater than value of Cube Cove lands (exchange of property only).	Includes additional compensation for costs incurred to date and future costs associated with affecting an exchange. Additional value subject to negotiations. Doesn't address Shee Atika's immediate cash flow needs.	May be acceptable to Shee Atika. May be unacceptable to one or more of the other parties.

SHEE ATIKA CUBE COVE LANDS: COMPENSATION OPTIONS

Settlement Option	Means of Compensation	Comment	Likelihood of Acceptance By Principal Parties
Land Exchange (continued)	Value for value exchange in property plus cash settlement.	This option addresses additional compensation for costs incurred to date and future costs associated with affecting a land exchange. This option also addresses Shee Atika's current cash flow needs. The size of the cash settlement would be subject to negotiations.	May be acceptable to Shee Atika. Acceptability to other parties, of land and associated resources received would depend on the size of the property and its location(s).
	Acre for acre exchange of Cube Cove lands for cut-over lands in the Tongass plus purchase of cutting rights on Cube Cove lands through first rotation.	Purchase of first rotation cutting rights would take the form of a annual annuity (payment) to Shee Atika over the first rotation (50-100 year period) based on the fair market stumpage value of the timber at the time of original conveyance of the lands. This option has the additional advantage of bypassing concerns about the annual allowable timber harvest from the Tongass National Forest.	May be acceptable to all parties.
Exchange for Other Values	Value for value exchange involving non-land assets.	Does not address issue of additional compensation for costs incurred to date by Shee Atika.	Low likelihood of being acceptable to Shee Atika.
	Value received 25 to 50% greater than value of Cube Cove property.	Addresses issue of additional compensation for costs incurred to date. Will result in Shee Atika becoming a landless corporation.	Acceptability will depend largely on Shee Atika's willingness to substitute other assets for land.

MITIGATION OPTIONS

This section of the report considers three ways in which the Cube Cove properties could be managed. An option in which the timber development of the Cube Cove properties would be managed as private lands in accordance with Shee Atika's management objective and applicable laws in perpetuity is not included. The omission of this option does not mean that this option should be excluded from consideration.

PTION CODE I-A

TIMBER HARVEST MITIGATION

The Cube Cove properties would be logged in accordance with the standards of the National Forest Management Act, USFS Southeast Alaska Area Guide, Tongass Land Management Plan, Visual Management Guidelines, USFS Chatham Area Project Guidelines, restricted sustained and various State and Federal MOU, and other conditions. The landowner would be compensated for lost production and increased logging costs due to imposition of these standards. The mitigation option does not, discuss where a log transfer facility should be constructed to access the Cube Cove timber or if conventional or nonconventional types of transfer facilities would be required under USFS guidelines.

The Cube Cove properties are private lands. The public's right to use and enjoy these lands and waters are restricted to public waters, lands and reserved easements. The mitigation guidelines recognize, however, that activities on the Cube Cove properties could affect the abundance of fish and wildlife and the visual aesthetics and recreational opportunity on public interest lands and waters (i.e. recreation cabins, lakes, trail easements, campsite easements and the coastal fringe). The recommended management guidelines will minimize the effects of logging on public interest lands and waters.

The imposition of these more stringent standards will increase Shee Atika Corporation's operating costs and deny the Corporation the opportunity to fully develop the resources on their lands. These costs and lost opportunities would require compensation such as additional land or monetary renumeration.

The recommended management guidelines focus on the most sensitive areas. These special areas are described as:

- o Fisheries Habitat Management Units (FHMU)
- o Wildlife Habitat Management Units (WHMU)
- o Recreation Management Units (RMU)

Fisheries Habitat Management Units (FHMU) - The FHMU is defined as follows:

- o Any lake or stream that supports an anadromous or resident fish is designed as a FHMU.

- o The FHMU is a maximum 200' corridor on each side of all lakes and streams which may be accessible or utilized by fish.

- o Stream inventory and fish utilization is incomplete for the Cube Cove properties. Therefore, for the purpose of this option it is assumed that all streams shown on a USGS quadrangle map that are potentially accessible to fish are used by fish. Field investigation will be required to confirm presence of fish. Streams identified nonfish bearing would be exempt from FHMU guidelines except for those guidelines pertaining to protection of water quality.

Wildlife Habitat Management Units (WHMU) - The WHMU are defined as follows:

- All habitat within 1/4 miles of the marine coastline is important bald eagle and wildlife habitat.
- All habitat within 330' of all bald eagle nest trees.
- 100 foot fringe adjacent to large muskegs, grass flats, lakes and large streams (first and second order). This is important for migration, food and shelter for bear and furbearing mammals.
- Predominately hemlock or hemlock/spruce old growth stands of 30 MBF/acre or more, that occur from sea level up to 1,000 feet in elevation, between 0 and 1 mile from the coastline and between 0° and 30° slope with southerly aspects (SW-S-SE). Habitat within these confines is believed to be critical winter habitat for Sitka blacktailed deer. Additional field survey data indicates that relatively high winter concentration of Sitka deer occur on the east end of Lake Florence, which is outside the defined critical habitat. Similar high concentrations may occur outside the defined critical deer habitat areas in the Ward Creek and Lake Kathleen drainages. Field investigations will be required to confirm that the defined area is important to Sitka blacktailed deer.

Recreational Management Units (RMUs)

The RMU objective is to identify visually sensitive areas and to provide maximum protection of foreground visual quality with lesser degrees of protection for midground and background landscapes. These objectives in conjunction with fish and wildlife objectives will maintain the quality of recreational opportunity from public interest lands and waters. These recreational areas include seven (7) one-acre campsite easements, thirteen (13) 25-foot wide trail easements across the Cube Cove properties and the landscape visible from Peanut, Florence and Kathleen Lakes and Chatham Straits.
Class 1 RMUs are described as follows:

- An area surrounding each one-acre campsite easement and a corridor paralleling each public trail easement.
- A corridor surrounding Peanut, Florence and Kathleen Lakes and areas along Chatham Straits abutting the Cube Cove properties.

- The width of the Class 1 RMUs will be sufficiently wide such that forest development activities will not be visually evident in the foreground from the easements (except for road crossing of trail easement), or from public waters (except for an log transfer facility in Cube Cove). The foreground is defined as a distance from 0 to 1/4 mile. Actual distance is determined on a site specific basis.

Class 2 RMUs are described as follows:

- Those Cube Cove properties that are visible as either midground and background from Florence, Kathleen and Peanut Lakes, and those properties from small boat and ferry traffic on Chatham Straits. Midground extends from the foreground zone up to three miles, while the background extends from midground zone to infinity.

Class 3 RMUs are described as follows:

- No Class 3 RMUs were identified in the Cube Cove properties.

Class 4 RMUs are described as follows:

- Those Cube Cove properties that will not be visible from normal recreation use or viewing areas, such as from lake surfaces or small and large boats in Chatham Straits. Refer to Figure 1 which shows the approximate boundaries of each RMU class.

Forest Development Mitigation Guidelines:

The USFS management guidelines are divided into general guidelines, that apply to all timber related development activities, and additional guidelines that supersede the less stringent general guidelines within the three special management unit categories (i.e. WHMU, FHMU, RMU). In the instances where management units overlap and there is a discrepancy in the guidelines, the more stringent guidelines will apply. In addition to the recommended guidelines, all applicable State and Federal regulations governing forest development activities would also apply.

In many instances the actual management of each unit and specific guidelines to be followed will require on-the-ground inspection by specialist to accurately assess the actual value of the area. The specialist will develop site specific guidelines to protect the resource values, where roads are constructed, timber is harvested and where retention is required.

USFS General Timber Management Guidelines

- For the purpose of this option, it is assumed the Cube Cove properties would fall under a USFS Land Use Designation (LUD) III. Under this designation up to 30% of the land and timber will be subject to extended rotation and retention. This 30% reserve will be allocated between fish and wildlife habitat and recreation values in a manner to provide maximum protection.

- The maximum clearcut size is 100 acres. All units should be designed to borrow from naturally established form, line, color or texture such that visual characteristics reflect natural occurrences in the surrounding area. Avoid block cuts.
- A minimum leave strip of 1,000 feet between each cutting unit.
- A minimum of 30 years must pass before clearcutting of a leave strip abutting an existing clearcut can occur.
- A 33% of the total volume can be removed in the first entry. A good distribution of cutting units is required.
- All retention and leave strips should be designed to be windfirm.
- Unavoidable activities that may have a disturbing or disrupting influence on fish and wildlife species or habitat during critical life history periods (e.g. spawning, nesting and feeding) will be scheduled for time periods when such influences will be minimal or nonexistent.
- Roading and timber harvest will require consultation with a soils scientist if these activities occur on:
  - well drained slopes exceeding 75%
  - poorly drained slopes exceeding 60%
  - ash soils exceeding 60%
  - clay soils exceeding 45%
  - side slopes with small to large v notches.
- Where violations of these policies or unforeseen impacts occur, operations will be suspended until action or reassessment of the area is undertaken to determine why the event occurred and identification of appropriate corrective action. Concurrently, immediate steps will be taken to protect and repair any damage that may have occurred.

USFS Management Guidelines Fisheries Habitat Management Units (FHMU):

Following guidelines apply within the FHMU (i.e. within 200 feet on each side of all streams).

- Retention, extended rotation and restricted harvest can be required in FHMU. The total acreage under retention restrictions cannot exceed the 30% allocation distributed between FHMU, WHMU and RMU.

- Maintain the capability of the land and water to provide and sustain fish populations through habitat management and protection.
- Meet national and State water quality standards.
- Within the FHMU site specific timber management guidelines need to be prescribed to protect fish habitat include site specific policies for:
    - prevention and control of surface runoff and associated sedimentation entering fish habitat
    - special logging methods
    - retention of streamside timber
    - maximum size, number and spacing of openings that can be created in an FHMU during an established period of time
- Nonfish bearing streams will be protected to ensure downstream water quality and habitat used by fish is protected.
- Activities will not be permitted in the FHMU if site specific evaluation determine that soil conditions, water pollution, logistical problems or other factors exist such that an activity cannot be carried out in conformance with the FHMU management guidelines.
- All stream crossings structures over fishbearing streams must assure unrestricted up and down stream movements of fish and comply with guidelines found in the "USFS Fish Culvert Roadway Design Guide R-10-42, September 1979."
- All stream crossing structures must accommodate the 50-year flood frequency.
- All permanent roads should be a minimum of 200 feet from primary streams. If roads must be located within 200 feet of a stream, a filter strip of undisturbed duff should be maintained between the road and stream. The width of the filter strip should = 10 x slope gradient + 100.
- Special roading requirements will be required in areas with natural slumps, landslides, avalanche paths, deep v notches and areas with slopes exceeding 35%. Specific requirements will be stipulated by soils scientists.
- Blasting will be restricted to times, distances and maximum

allowable blast over pressure. Specific requirements will be controlled by ADF&G.

- Ground disturbance, in a FHMU, as a result of logging should be less than 10% baring to mineral soil and 20% mixing of mineral soil and duff.

- In v notches and alluvial fans, soil disturbance occurring from timber harvest should be less than 5% baring to mineral soil and 15% mixing of mineral soil and duff.

- All roads and stream crossings will be inspected, culverts cleaned, ditch lines maintained and correct surface erosion problems corrected prior to September of each year.

- All mineral soils, exposed as a result of logging, in a FHMU shall be seeded with grass seed upon completion of logging.

USFS Management Guidelines Wildlife Habitat Management Units (WHMU) - Within the WHMU guidelines apply.

- Retention, extended rotation and other restricted harvest guidelines can be required in a WHMU. The total acreage under retention restrictions cannot exceed the 30% allocation between WHMU, FHMU and RMU.

- Establish an undisturbed wildlife habitat zone of 330 feet or more in radius around each bald eagle tree prior to any forest development activity.

- Maintain a 1/4 mile timber screen adjacent to marine coastline to maintain desired quality and quantity of bald eagle nest and perch trees and other wildlife habitat and migration corridors. Unavoidable encroachment must be designed to minimize adverse impacts. Do not locate roads within 1/8 miles of all marine shorelines.

- Maintain a 100' buffer along large muskegs, grass flats.

- In deer winter range retain 50-60% available volume in the first entry. Avoid high volume hemlock stands and high volume hemlock spruce stands (i.e. greater than 30 mbf/ac.). Prior to harvest an inspection should be conducted to identify high use areas for retention. In high value habitat areas retention of entire blocks consisting of a diverse habitat characteristics, and volume conditions, is preferrable to retaining selected high volume stands. Retention for wildlife habitat will be provided through the 30% retention allocation.

- Wildlife habitat requirements can be partially met through the size, shape, location and dispersal of cutting units. Areas retained in natural conditions, silvicultural systems and multiple entry harvesting.

- A maximum number of snags are retained for wildlife use consistent with the objectives for a particular species, aesthetic values and Federal Occupancy Safety and Health Act Standards.

- Log transfer facilities and camps should be located outside WHMU where desirable or where the least disturbance with wildlife will result.

- Procedures for disposal of garbage and other attractive nuisances will be required. Logging camps and other developed sites are to be located away from areas of substantial bear density (e.g. along anadromous streams).

- Camps, cabins and other structures should be separated from tidal flats used by aquatic and terrestrial life. Structures should be located far enough from spawning streams to avoid disturbance of fish.

- Roads, buildings and other facilities and operations not requiring direct water access will normally be located behind a zone of windfirm timber.

USFS Management Guidelines Recreational Management Units (RMU): Within each respective RMU class the following timber harvest guidelines apply. (See Figure 1 for a map depicting RMU boundaries).

- Class I RMU guidelines (approximately 2,100 acres or 9.1% of the Cube Cove properties are within this class):

  - Development should not be visually evident to the casual observer. Timber harvest is limited to use of minimum impact harvest system. Logging costs will be very high with substantial decrease in recoverable volume.

  - Minimum rotation 200 years.

  - 10% of the Class 1 RMU viewshed can be harvested every 20 years.

  - Maximum unit size 25 acres. Units must be widely distributed over the entire viewshed.

  - Units should be shaped to blend with natural openings and be designed to preserve scenic quality.

  - Preferred harvest systems, helicopter or skyline avoid high lead.

  - Avoid quarries within Class 1 RMU or locate them behind natural topographic and vegetative features to minimize visual impact from observation points.

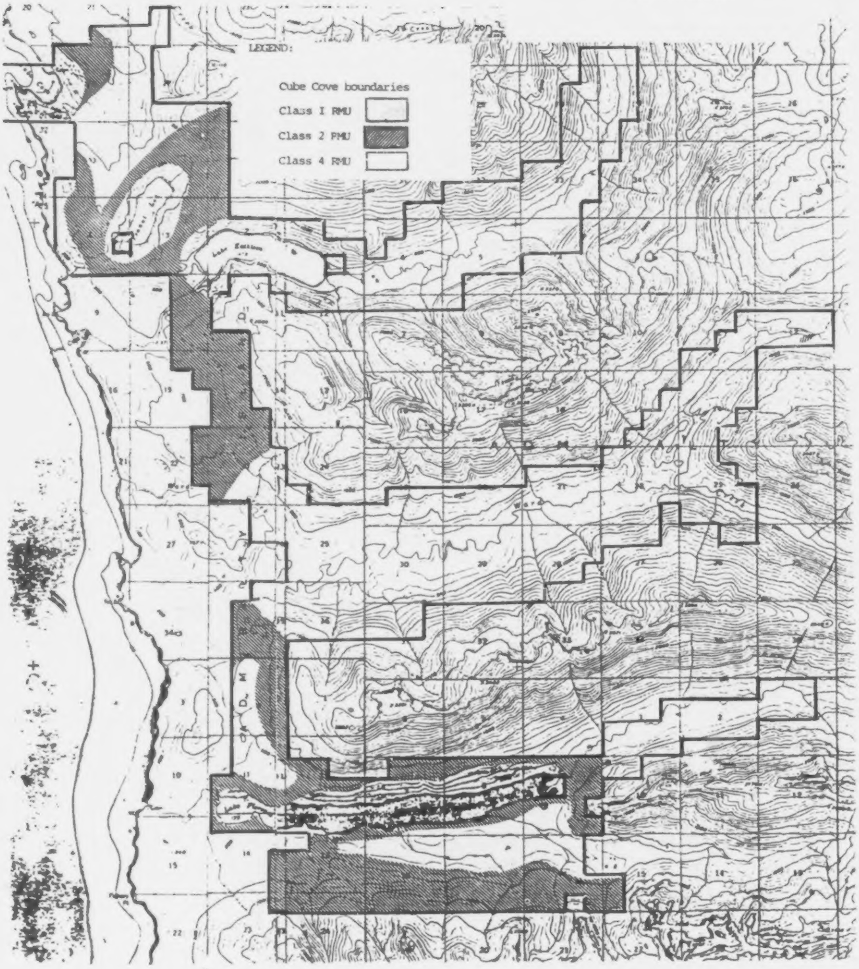
LEGEND:
Cube Cove boundaries
Class I RMU
Class 2 RMU
Class 4 RMU

FIGURE 1: RMU approximate boundaries

  - Roads should follow contour lines and avoid straight lines in line of sight from observation points.

- Class 2 RMU guidelines (approximately 7,470 acres or 32.4% of the Cube Cove properties are within this class):
  - Development should be visually subordinate to the existing landscape character. Timber harvest will depend upon lengthened rotations and small clearcuts. Logging costs will be moderately high and complete recovery of volume may not occur.
  - Minimum rotation 125 years.
  - 20-25% of the Class 1 RMU viewshed can be harvested every 25 years.
  - Maximum unit size 50 acres, larger units are acceptable if a larger unit will enhance blending of the unit with the surrounding landscape.
  - Avoid block cuts, units should blend with natural shapes and topography.
  - Preferred harvest system skyline, some high lead.
  - Rock quarries should be located in areas that are visually subordinate.
  - Roads should avoid straight lines in line of sight from observation points.
- Class 3 RMU guidelines (0 acres is within this class):
  - Class 3 RMUs do not occur on the Cube Cove properties. Consequently, guidelines were not developed for this class.
- Class 4 RMU guidelines (approximately 13,503 acres or 58.5% of the Cube Cove properties are within this class):
  - All development activities are permitted. Clearings should appear to be natural occurrences when viewed as background. Logging costs should be normal. Full potential yield may be expected.
  - Standard USFS management practices.
  - 100 year rotation.
  - Maximum clearcut size 100 acres.
  - Units should be shaped to blend with natural openings.

- Quarries should be small and blend with natural surroundings in color and texture.

Conclusion:

The USFS timber development guidelines will protect water quality and the spawning and rearing habitats of resident anadromous fish. Implementation of these guidelines will ensure that fisheries productivity is maintained and may even be enhanced if fish passes around barriers to salmon migration are installed.

The protection of wildlife occurs through retention of important coastal habitat used by wildlife for migration nesting and feeding. Further, the areas surrounding each lake are recognized for their recreational and wildlife habitat values and accordingly are protected by very stringent forest development guidelines. Other habitats particularly critical deer winter range habitat will be protected by identifying site specific areas for retention and development of site specific guidelines. The effectiveness of retention and guidelines in preventing declines in existing wildlife populations, particularly for Sitka blacktailed deer and brown bear is the subject of ongoing research. Until this research is complete it is difficult to predict if the recommended guidelines accomplish all or a part of their intended objective.

Recreational opportunity is maintained by protection of fish and wildlife habitat. Maintaining the quality of recreational opportunity occurs by implementation of the landscape management guidelines.

DEVELOPMENT OF CUBE COVE PROPERTIES UNDER PUBLIC TIMBERLAND MANAGEMENT STANDARDS: COMPENSATION FOR FINANCIAL LOSSES

One of the options being considered to resolve the Cube Cove dispute consists of Shee Atika remaining on Admiralty Island. Their timber harvest operations, however, would be subject to management and development standards which would be much more restrictive than those that would apply to a private timberland owner.

These more restrictive land management and development standards, when compared to private forestland development, would result in substantial loss of revenues to a private timberland owner. These revenue losses will come about in two principal ways: 1) through higher operating costs associated with timber harvest operations and, 2) postponement of timber harvest operations throughout the phased transition from old-growth to second-growth forests. The latter practice is, by far, the most significant in terms of the impact on revenues to a private timberland owner.

It appears reasonable that a prudent private timberland owner would be unwilling to agree to these much more restrictive land management and development standards without being compensated for the financial losses that would result from development of his lands under these more restrictive practices.

In considering the magnitude of the compensation package needed to encourage the private timberland owner to adopt more restrictive standards, it is first necessary to determine how a public timberland manager's timber harvest program, in the case of old-growth timber stands, would differ from a private timberland manager's timber harvest program when faced with the same timber resources. The mode of operations of the two timberland managers would be very different due to differing objectives of private industry and public institutions.

PUBLIC VERSUS PRIVATE DEVELOPMENT OF TIMBERLANDS

In the case of the private timberland owner (which is the situation with respect to the Cube Cove properties), it is in the best interest of the private corporation to convert old-growth stands to fast-growing second-growth stands as quickly as possible, consistent with regeneration needs, applicable State and Federal environmental laws, and corporate cash flow ojectives over time. One reasonable timberland management program would be to manage the Cube Cove timberlands on a 60-year rotation whereby the entire timberland holding would be fully regulated at the end of the initial 60-year period. A fully regulated timberland property simply refers to a condition whereby an approximate equal volume of timber would be available for harvest each year in perpetuity. The precise management program, rotation age selected and other considerations will, in the final analysis, be determined solely by the owners of the Cube Cove properties. The example discussed in the preceding narrative is just that - an example and one possible timber harvest program.

The land management and development standards to be followed by the public timberland manager, will result in a significantly different timber harvest program than is the case with the private timberland owner. One possible timber harvest program, when managed according to the various public land management standards, is to remove all old-growth timber from the least environmentally-sensitive areas (Class IV lands) in a series of three entries over a 100-year period. Areas classified as being moderately sensitive (Class II lands) would be harvested in a series of four entries over a 125-year period. Old-growth timber in the most sensitive areas (Class I lands) would be harvested in a series of six entries over a 200-year period. The rotation ages in this instance would be 100 years, 125 years and 200 years, respectively.

The more stringent timber harvest program (public land management standards) may entail a harvest program similar to the following: The initial entry into the area would entail harvesting approximately 33 percent of the timber volume on Class IV lands, 25 percent of the timber volume on Class II lands and 10 percent of the timber volume on Class I lands during this first entry whereby an equal volume of timber would be harvested annually over a ten-year period; no further timber harvest would occur in the area until year 34 after commencement of initial entry into the area; commencing in year 34, timber harvesting operations would be carried out over another 10-year period, with a subsequent 23-year waiting period after this second 10-year harvest period; after 100 years all the timber on Class IV lands would be harvested, approximately 75 percent of the timber on Class II lands will have been harvested and approximately 50 percent of all the timber on Class I lands will have been harvested.

Once again the example provided, which illustrates one possible timber harvest program under conditions of public land management and development standards, is just that - an example only. Standards applicable to public lands provide some flexibility with respect to the specific harvest schedule which will be adopted. As mentioned previously, private timberland owners have even greater flexibility in determining the harvest schedule which will be employed relative to their timberlands.

ESTIMATED COMPENSATION NEEDED

Preliminary indications are that the amount of compensation needed to reimburse the private landowner for being required to manage and develop its lands based on public land management standards would be in the range of 50 to 60 million dollars. The range in compensation indicated is based on the assumption that payment will be a lump-sum, up-front payment. This estimate of compensation does not include additional costs which would be incurred in connection with development of the log transfer facility and associated infrastrucure.

This estimate of the magnitude of the compensation package needed to reimburse the private landowner for increased costs and foregone revenues resulting from adopting more stringent management and development standards is not meant to be a definitive statement of the amount of compensation needed to compensate the landowner. This effort, is simply an attempt to provide the appropriate decision-makers with some indication of the range of compensation which may be necessary to compensate the private landowner in this situation.

More detailed analysis is needed to definitively establish the amount of compensation needed in this situation. A more stringent analysis will entail a detailed analysis of the most appropriate private timberland harvest program, the most appropriate harvest program under public land management conditions, cash flow analysis in the case of each timber harvest program, and discounting (at the appropriate interest rate) of the cash flow stream differential to arrive at the present net value of the compensation package needed to compensate the owner of the Cube Cove properties for adoption of more stringent management standards.

OPTION CODE: I-B

RECREATION AND TOURISM DEVELOPMENT

The harvest of timber from the Cube Cove properties would be prohibited. Uses such as tourism, recreation, home sites, etc., however, would be allowed. Compensation would be provided to the affected landowner for lost revenues.

Under this option Shee Atika would require full compensation for lost income as a result of the prohibition on timber harvest. Some loss of income could be recovered through tourism, resort development and lease of sale of high value recreation properties around Peanut, Kathleen and Florence Lakes and those Cube Cove properties abutting Chatham Straits. Although estimates of income from recreation development are unavailable, this income would probably be miniscule compared to the appraised timber values of the Cube Cove properties.

The development of this area for tourism, recreation and cabin sites will place increased pressure on the finite fish and wildlife resources in the area. Further, the potentially high recreation concentration may result in significant user related impacts to the adjacent Admiralty Island wilderness. Alaska Department of Environmental Conservation would have serious concerns regarding impacts upon water quality and solid waste disposal problems resulting from high density recreation development.

OPTION CODE: I-C

EXCHANGE AFTER FIRST ROTATION HARVEST

Shee Atika could exchange the Cube Cove properties for Tongass National Forest (TNF) LUD III and IV lands, but retain first rotation harvest rights on the Cube Cove properties. In exchange for retaining first rotation cutting rights, Shee Atika would not receive first rotation cutting rights in the exchange lands. The Cube Cove properties would be classified as wilderness upon completion of first rotation harvest. This option is a straightforward proposal which minimizes the number of involved or concerned parties and avoids the requirement for a substantial cash payment to Shee Atika.

This option also avoids the potential problems with options proposing exchanges of Cube Cove properties for TNF LUD III or IV lands which are part of the commercial forestland base subject to Section 705(a) of ANILCA. Selection from 705(a) lands is a problem since the U.S. Forest Service contends their ability to meet the 705(a) requirement to maintain a timber supply of 4.5 billion board feet per decade from LUD III and IV lands is tenuous. Additional selection by Shee Atika from these TNF lands would further erode the U.S. Forest Services's ability to meet Section 705(a). This option circumvents the short-term problem of insufficient timber base to meet the 4.5 bbf harvest since in second, and subsequent, rotations the sustainable yield from the TNF should increase dramatically. Consequently, Shee Atika could select lands from the commercial forestland base without impacting the future 4.5 bbf harvest objectives.

Value Comparison: Under this option value comparison will be on the exchange lands capability to produce timber (i.e site class) compared to the Cube Cove properties. Value comparison will also consider inplace roads, log transfer facilities and campsite infrastructure.

Compensation: In addition to previously described compensation elements, this option would need to consider compensation for any timber on the Cube Cove properties retained for mitigation. Additional compensation would be required for national interest values plus any difference in the site class between the Cube Cove properties and the exchange lands. Both the national interest and site class difference could be compensated through receipt of additional lands.

In the long-term this option results in Shee Atika moving off the Island and the Cube Cove properties becoming part of Admiralty Island wilderness monument. Some impacts from logging can be minimized by mitigation requirements to protect fish and wildlife habitat and recreation resources. Intensive second growth management could be required to create habitat conditions more suitable to fish and wildlife than unmanaged second growth stands.

TIMBERLAND EXCHANGE OPTIONS

This section of the report is a survey of potential sites that might be considered for exchange with the Cube Cove properties. The possible exchange sites were divided into five general categories:

- Tongass National Forest - LUD I Lands (Wilderness)
- Tongass National Forest - LUD I Wilderness Release Lands
- Tongass National Forest - LUD II Lands
- Tongass National Forest - LUD III and IV Lands
- Other Southeast Forest Lands

Under each category individual or a combination of VCUs or other land units were identified for further evaluation. The initial selection was based on a preliminary determination if the VCU or VCUs was considered to contain above average timber volume per acre for the commercial forestland in that unit.

Subsequent technical evaluations of the selected areas were conducted to compare each area with the Cube Cove properties. In this comparison the following features were used that guided a judgment call for the relative merits of the possible exchange areas.

Log Transfer Facilities (LTFs). Initially, any timber volumes under consideration must be accessible by a road or transportation system but there must also be a suitable transfer site for logs to ocean waters. "Suitable" means protection from weather conditions, of a size to accommodate log rafting and storage and with adequate water depth to preclude grounding of logs at any tidal stage.

Camps are considered to be either land-based or floating. Land camps require more permament facilities such as water and sewer lines, power supply and buildings which are very costly and must be paid for or amortized by the timber volume attributable to these camps. Since a 70-100 person land camp can cost in excess of half a million dollars, there must be a sufficient amount of timber available to amortize camp costs. Normally, camps can be built with volumes of 100 MMBF at 20 MMBF production per year giving a five-year life. A floating camp is considered where volumes are insufficient to justify a land camp but also where there is protection for mooring and accessing.

Logistics and Accessibility. An area to be developed for logging needs to be served by aircraft, freight boats, tugs and oil barges. The distance these must travel to service a logging operation is important in establishing rates. High rates for remote areas can be an important factor for consideration.

Lake and stream frequency is considered in evaluating costs needed for protection of habitat and water quality.

Topography is considered in order to determine ease or difficulty of road construction and logging, road steepness or grade, affects haul costs. Topography also affects expected length of the logging season; e.g., high elevations with early snowfalls reduces the operating season.

Acreages and volumes are important in an evaluation and comparison. In the case of Cube Cove the average volume per acre on those lands owned by Shee Atika is 32,332 board feet over 23,073 acres. These acres are portions of VCUs 147, 148, 149 and 150 and are in reality the best timbered acres within these VCUs. In order to make a comparison with other areas it was necessary to use the Forest Service estimate for the entire Cube Cove VCUs for comparison with the VCUs in other areas. The U.S. Forest Service estimate of volume in these VCUs, including the Shee Atika ownership, is an average of 27,000 board feet per acre over 32,760 acres of commercial forestland.

Comparison also considers the volume recovery per mile of road. The cost of roads is amortized over the volume logged. The more road needed for less volume logged increases the amortization rate reducing income to the landowner. Although some other areas may have equivalent total volumes, the dispersion of this volume may be widespread and require more miles than the norm. Further, the volume per acre may be similar but timber types and quality may not be.

Normal operable volume is the U.S. Forest Service estimate of that volume which can be logged using conventional methods, primarily high lead. The values for each possible exchange are compared with the Cube Cove properties.

Road construction is evaluated by considering accessibility to the timber available and the relative ease or difficulty in doing so. In the Cube Cove situation, main roads can be built up the main valleys with main spurs on the gentle side slopes under average or easier than average road building conditions. Other areas are compared to this as being similar, more, or less difficult.

All features are used in making a judgment as to the adaptability for consideration of selection. For those rated Good, most features compare favorably with Cube Cove or have this potential insofar as available information indicates. Those rated Poor have a feature or features such as remoteness, small volumes, difficult access, steep, rugged terrain, and/or high development costs. Those rated Merits Further Evaluation indicates that available information is inadequate to determine if this is a good or poor site, and further evaluation is needed.

The evaluations of each possible exchange site were desk studies. Before a final determination on the suitability site is made, additional more detailed evaluations will be required. The technical evaluations generally avoid drawing any conclusions except to state if the area, from a technical perspective, is a good or poor exchange site, or if the site requires further evaluation, or may be a good site if limited volume is needed to complete a settlement package. These evaluations do not attempt to identify any minimum criteria that Shee Atika or any other party would require. Further, the identification and evaluation of these areas did not consider political, social, contractural or other factors which may result in the area(s) being unacceptable exchange options. It is assumed that these elements will be incorporated as further efforts to resolve the present issue proceed.

A variation within the Tongass National Forest (TNF) exchange options is suggested for consideration. The Cube Cove properties could be exchanged for a first rotation harvest rights from the TNF lands not in the present commercial forestland base such as LUD I, LUD I release or LUD II lands. Although the harvest right to the lands would be conveyed to Shee Atika, the title to the land would remain with the USFS, and ultimately would be returned to its original classification once all first rotation timber had been removed. Concurrent with the exchange and receipt of the first rotation harvest rights, Shee Atika would also select and receive title to LUD III or IV lands in the Tongass National Forest. First rotation harvest rights from these lands would, however, remain with the USFS to meet the Sec. 705(a) ANILCA (P.L. 96-487 12/2/1980) requirements. This modification is considered because a major constraint to any exchange of the Cube Cove properties for TNF LUD III or IV lands is the USFS assertation that the present capability of the TNF to meet the 4.5 billion board feet (bbf) per decade timber supply Sec. 705(a) ANILCA is tenuous. However, once lands within the TNF are under second growth management, it is reported that the TNF capability to produce timber will dramatically increase, resulting in a surplus to the 4.5 bbf timber supply requirement.

The net result of this option is to transfer the impact of logging from the Cube Cove properties to a possibly less environmentally sensitive area, preclude the need for a substantial cash settlement and increase the total acreage under Admiralty monument/wilderness designation (by incorporation of the Cube Cove properties).

OPTION CODE: II-A

EXCHANGE CUBE COVE PROPERTIES FOR LUD I LANDS

Shee Atika could exchange the Cube Cove properties for other timberlands in ANILCA-designated TNF wilderness-monuments. The Cube Cove properties upon exchange could become part of the Admiralty Wilderness-Monument. Any trade would include compensation for any disparity in timber values, plus increased costs and lost revenues resulting from the exchange.

This option may (due to fair compensation adjustments) result in Shee Atika selecting more acreage from other LUD I lands than exists in the Cube Cove properties. This will result in a net loss of total acres under wilderness-monument classification. The extent of the net loss will be predicated upon the final compensation agreement. The net loss can be avoided by restricting exchange to an acre for acre and including other forms of compensation such as monetary compensation, additional selections in LUD II, III or IV lands or other federal properties.

Seven blocks consisting of a total of 30 VCUs (24 Lud I, 4 LUD II and 2 LUD IV) were selected for further evaluation for exchange consideration. Although this is a LUD I exchange option, two of the blocks, the Tebenkof Wilderness and the Russell Fiord, are in close proximity to LUD II or IV lands and form logical units and are evaluated accordingly.

The following sections evaluate each potential exchange area and compare the area with the four VCUs (147, 148, 149 and 150) encompassing the Shee Atika Cube Cove properties. The U.S. Forest Service VCU statistics were used, instead of the actual statistics for the Shee Atika Cube Cove properties, in order to maintain uniformity in the information used for comparison.

Option Code II-A-1

TEBENKOF WEST KUIU
VCUs 403-407

VCUs 404-407 are LUD I
VCU 403 is LUD II.

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 59,058 acres. CFL acreage constitutes about 64% of the total area in these VCUs. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 658 million board feet.

Infrastructure: Three log transfer facilities are expected to be needed in this area along with either one land-based camp or three floating camps.

Operating Logistics: This area is located in a remote location but is readily accessible. Topographic conditions are moderate. There is a heavy concentration of streams in this area and there is also an important watershed in VCU 405. Road construction conditions appear to be average. The length of the logging season is expected to be approximately 8 months.

Selection Potential: Good potential as a selection candidate.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-A-2

NORTH ADMIRALTY
VCUs 144-147

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 38,163 acres. CFL acreage constitutes about 61% of the total area in these VCUs. CFL timber stands average 27 MBF/acre. Total timber volume of normal operability amounts to approximately 708 million board feet.

Infrastructure: One log transfer facility and one land-based camp will be needed to operate in this area.

Operating Logistics: This area is in a remote location and is characterized by rough topography with a moderate number of streams. Road construction is expected to be more difficult than average. Length of logging season is expected to be 7 to 7-1/2 months.

Selection Potential: Moderate to good potential as a selection candidate - merits further consideration.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-A-3

BURROUGHS BAY UNUK RIVER
VCUs 782, 786, 790, 791

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 53,430 acres. CFL acreage constitutes about 39% of the total area in these VCUs. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 486 million board feet.

Infrastructure: Two log transfer facilities and two floating camps will be needed to operate in this area.

Operating Logistics: This area is a remote location but is readily accessible. Topographic conditions in much of this area is extremely difficult except for the valley bottoms. There is a heavy concentration of streams and also an important watershed in VCU 782. Road construction conditions are easy on the valley bottoms except for some concerns with respect to flooding. Road building conditions at higher elevations in the area are extremely difficult. The length of the logging season is expected to be approximately 7-1/2 months.

Selection Potential: The river bottoms appear to be the only viable areas available for development. Selection potential appears to be moderate. This area, however, deserves further consideration.

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COMPARATIVE CUBE COVE AREA
STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-A-4

DUNCAN CANAL KUPREANOF
VCU 441

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 11,072 acres. CFL acreage constitutes about 49% of the total area in this VCU. CFL timber stands average 20 MBF/acre. Total timber volume of normal operability amounts to approximately 135 million board feet.

Infrastructure: One log transfer facility and one floating camp will be needed to operate in this area.

Operating Logistics: This area is readily accessible and is characterized by gentle topographic conditions. There are numerous streams in the area and also an important watershed. Road construction conditions are expected to be easier than average in this area. The length of the logging season is expected to be about 8 months in this area.

Selection Potential: Low to moderate selection potential. Although overall operating conditions are favorable, low average volume per acre is highly unfavorable.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-A-5

WILSON ARM
VCUs 815, 817, 818, 826, and 867

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 41,549 acres. CFL acreage constitutes about 33% of the total area in these VCUs. CFL timber stands average 20 MBF/acre. Total timber volume of normal operability amounts to approximately 373 million board feet.

Infrastructure: Two log transfer facilities and one land-based camp will be needed to operate in this area.

Operating Logistics: Access to this area is rated as fair. Topographic conditions in this area are very difficult with the exception of the valley bottoms. There is a heavy concentration of streams, there is also an important watershed in VCU 826. Road construction conditions are easy in the valley bottoms but are extremely difficult in the higher elevation areas. The length of the logging season is expected to be about 7 months in this area.

Selection Potential: This area is rated as being of moderate selection potential and will require further consideration.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-A-6

CHICHAGOF YAKOBI
VCUs 255, 265, 275, 276

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 19,774 acres. CFL acreage constitutes about 41% of the total area in these VCUs. CFL timber stands average 20 MBF/acre. Total timber volume of normal operability amounts to approximately 277 million board feet.

Infrastructure: A total of six or more log transfer facilities would be needed to operate in this area. One floating camp would be needed.

Operating Logistics: This area is exposed to adverse water conditions on the west coast of Chichagof Island. Accessibility to the area is poor. Topographic conditions in the area range from easy to extremely difficult. There are a large number of streams in the area along with a few lakes. In addition, there is an important watershed in VCU 265. Road construction conditions are expected to be easy over approximately one-fourth of the area and very difficult in the remaining 75% of the area. The length of the logging season is expected to be approximately 7 months.

Selection Potential: This area is believed to be poor selection candidate due to the exposure of the area on the west side of Chichagof Island. Rafting also is not feasible in this area. Barging will quite likely be required. It would be difficult to service operations in this area.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-A-7

RUSSELL FIORD YAKUTAT
VCUs 361, 365, 381, 366, 372, 364, 376

VCUs 361 and 365 are LUD I
VCUs 366, 372 and 381 are LUD II
VCU 364 and 376 are LUD IV

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 34,705 acres. CFL acreage constitutes about 32% of the total area in these VCUs. CFL timber stands average 23 MBF/acre. Total timber volume of normal operability amounts to approximately 644 million board feet.

Infrastructure: One log transfer facility will be needed in this area. There is a possibility that workers could live in Yakutat in conjunction with operating in this potential selection area. Depending on the specific selection pattern, one land-based camp facility may be needed.

Operating Logistics: This area is readily accessible. Topographic conditions in most of this area are very gentle, except for areas within VCU 361 which are very difficult. There is an extremely heavy concentration of streams in VCU 366. The area is classified as a high habitat quality area. There is also an important watershed in VCUs 372 and 376. There is also an important watershed in VCU 364. Road construction conditions in this area are easy. The length of the logging season is expected to be between 6 and 7 months.

Selection Potential: This area appears to have low potential as a selection candidate.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

OPTION CODE: II-B

EXCHANGE FOR LUD I RELEASE LANDS

Shee Atika would exchange the Cube Cove properties to the USFS for other LUD I releases (Karta and Etolin Island). Exchange would include compensation for any disparity in timber values, plus increased costs and lost revenues resulting from the exchange. The Cube Cove properties upon exchange would be classified as wilderness/monument. The LUD I release lands are those areas previously classified as LUD I but were not permanently designated as LUD I (wilderness/monument) by ANILCA. These lands will be reclassified as LUD II, LUD III or IV when TLMP is revised. Presently the LUD I release land and corresponding timber volume are not included as part of the TNF commercial forestland base subject to the 4.5 bbf/decade harvest.

There are three areas of the TNF classified as LUD I release. Only two, Karta and Etolin, have commercial forestlands. A total of six VCUs in the Karta and Etolin LUD I release VCUs were evaluated. Two VCUs, 605 and 607, were excluded from consideration.

The following sections evaluate each potential exchange area and compare the area with the four VCUs (147, 148, 149 and 150) encompassing the Shee Atika Cube Cove properties. The U.S. Forest Service VCU statistics were used, instead of the actual statistics for the Shee Atika Cube Cove properties, in order to maintain uniformity in the information used for comparison.

Option Code II-B-1

KARTA RIVER
VCU 606 and 608

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 12,141 acres. CFL acreage constitutes about 66% of the total area in these VCUs. CFL timber stands average 28 MBF/acre. Total timber volume of normal operability amounts to approximately 254 million board feet.

Infrastructure: One log transfer facility will be needed to operate in this area. Workers would commute from an existing camp.

Operating Logistics: This area is readily accessible and is characterized by gentle terrain. The area contains an important watershed. There is a moderate amount of streams in the area. VCU 606 is classified as very important habitat. Road construction conditions are easy to average. The length of the logging season is expected to be about 8 months.

Selection Potential: This area is believed to be a good selection candidate. There appears to be an opportunity to tie to an existing road system and log transfer facility.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-B-2

ETOLIN ISLAND
VCUs 471-474

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 42,814 acres. CFL acreage constitutes about 47% of the total area in these VCUs. CFL timber stands average 19 MBF/acre. Total timber volume of normal operability amounts to approximately 576 million board feet.

Infrastructure: Four or more log transfer facilities and one land-based or float camp will be needed to operate in this area.

Operating Logistics: Access to this area is good. Topographic conditions on the south end of this area are gentle but are much more difficult on the remaining areas. There is a heavy concentration of streams in this area. Generally road construction conditions are average in this area, however, there are some areas that are not roadable due to the rough topography. The average length of the logging season is expected to be about 8 months.

Selection Potential: This area has moderate selection potential. This is a very large area and some of the area contains gentle terrain, other areas are more rugged. Operations in this area would require a number of separate developments.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

OPTION CODE: II-C

EXCHANGE FOR LUD II LANDS

Shee Atika would exchange the Cube Cove properties for Tongass National Forest (TNF) lands classified as LUD II. Cube Cove properties would be reclassified as wilderness monument.

LUD II lands are not included in the commercial forestland base subject to the 4.5 bbf mandated cut. The majority of the LUD II lands have relatively limited commercial forestland values. These areas also have other nontimber values (e.g. fish, wildlife, etc.). The LUD IIs with moderate to high timber values are generally isolated parcels which individually will not provide sufficient land and timber volume, consequently, several isolated tracts (i.e. from each other) would have to be selected to meet Shee Atika's entitlement. Further, the individual LUD IIs may not provide a sufficient volume to be economically operable areas. Although exclusive selection from LUD II lands may not be feasible to meet Shee Atika's total entitlement, the LUD IIs in combination with contiguous LUD I, LUD III and LUD IV may provide a feasible option by minimizing removal of forestlands subject to the 4.5 bbf.

Twelve blocks consisting of a total of 14 LUD II VCUs were identified for further evaluation for exchange consideration. A total of four additional LUD II VCUs, three in Yakutat and one on Kuiu Island, were also identifed for further considerations. These VCUs, however, were in close proximity to previously identified LUD I VCUs forming logical LUD I evaluation units. These four were evaluated in association with either the Tebenkof or Russell Fiord-Yakutat LUD I exchange option.

The following sections evaluate each potential exchange area and compare the area with the four VCUs (147, 148, 149 and 150) encompassing the Shee Atika Cube Cove properties. The U.S. Forest Service VCU statistics were used, instead of the actual statistics for the Shee Atika Cube Cove properties, in order to maintain uniformity in the information used for comparison.

Option Code II-C-1

NAHA RIVER
VCU 742

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 19,437 acres. CFL acreage constitutes about 61% of the total area in this VCU. CFL timber stands average 24 MBF/acre. Total timber volume of normal operability amounts to approximately 308 million board feet.

Infrastructu : One log transfer facility and one land-based camp is needed to operate in this area. There is a possibility that workers could commute from Ketchikan.

Operating Logistics: This area is readily accessible. Topographic conditions in this area are average. All the timber is accessible. There is a heavy concentration of streams in the area as well as a lake system. There is a high quality watershed in the area and much of the area is classified as important habitat. Road construction conditions in the area are expected to be average. The average length of the logging season is expected to be about 8 months.

Selection Potential: This area appears to be a good selection candidate. U.S. Forest Service road reconnaissance work indicates that all timber is accessible in this area.

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COMPARATIVE CUBE COVE AREA
STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-2

YES BAY
VCU 724

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 17,247 acres. CFL acreage constitutes about 41% of the total area in this VCU. CFL timber stands average 20 MBF/acre. Total timber volume of normal operability amounts to approximately 180 million board feet.

Infrastructure: One log transfer facility and one land-based or float camp will be needed to operate in this area.

Operating Logistics: This area is readily accessible. Topographic conditions are average to difficult with a heavy concentration of streams and a lake system in the area. Road construction conditions in the area are rated as average to difficult. The length of the logging season is expected to be about 8 months.

Selection Potential: This area is rated as a moderate selection candidate. This area merits further consideration.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-3

ENDICOTT ARM
VCU 66

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 7,622 acres. CFL acreage constitutes about 54% of the total area in this VCU. CFL timber stands average 18 MBF/acre. Total timber volume of normal operability amounts to approximately 109 million board feet.

Infrastructure: Three log transfer facilities and one land-based or float camp will be needed to operate in this area.

Operating Logistics: Access to this area may be difficult at times. Topographic conditions are gentle near the beach areas, but become very difficult at higher elevations. There are no significant streams in the area. Road construction conditions vary from easy in the lower areas to difficult at the higher elevations. The average length of the logging season is expected to be 7 months.

Selection Potential: This area appears to be of moderate selection potential. There may be some difficulty in terms of developing an inner-connecting road system. This area should be reviewed in conjunction with VCUs 68-76.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-4

TENAKEE INLET CHICHAGOF
VCUs 228 and 229

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 11,174 acres. CFL acreage constitutes about 27% of the total area in these VCUs. CFL timber stands average 38 MBF/acre. Total timber volume of normal operability amounts to approximately 130 million board feet.

Infrastructure: Two to three log transfer facilities and a floating camp are needed to operate in this area. There is some possibility of being able to commute from Tenakee.

Operating Logistics: Access to this area is fair to good. Topographic conditions vary from gentle topography in the valleys to very difficult terrain in other areas. Very few important streams in the area. Road construction conditions are expected to be average in this area. The length of the logging season is expected to be approximately 7 months.

Selection Potential: This area is believed to be of moderate potential as a selection candidate. Terrain in this area, however, does not appear to lend itself to an inner-connecting road system.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-5

IDAHO INLET NORTH CHICHAGOF
VCU 190

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 11,544 acres. CFL acreage constitutes about 22% of the total area in this VCU. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 177 million board feet.

Infrastructure: Four log transfer facilities and one floating camp will be needed to operate in this area.

Operating Logistics: This area is in a remote location and is characterized by very difficult topography except for the valley bottoms. There are very few streams in the area. Road construction conditions are expected to be average in this area. The estimated length of the logging season is 7 months in this area.

Selection Potential: This area has moderate potential as a selection candidate. This area, however, is characterized by difficult and steep terrain.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-6

ROCKY PASS KUPREANOF-KUIU
VCUs 427 and 428

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 26,458 acres. CFL acreage constitutes about 41% of the total area in these VCUs. CFL timber stands average 28 MBF/acre. Total timber volume of normal operability amounts to approximately 329 million board feet.

Infrastructure: Two log transfer facilities will be needed to operate in this area and also one floating camp.

Operating Logistics: This area is readily accessible and is characterized by gentle topographic conditions with a moderate to heavy concentration of streams in the area. Road construction in the area is expected to be easier than average. The length of the logging season is expected to be about 8 months.

Selection Potential: This area is rated as being of low to moderate selection potential.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-7

BRADFIELD CANAL
VCU 541

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 9,173 acres. CFL acreage constitutes about 20% of the total area in this VCU. CFL timber stands average 26% MBF/acre. Total timber volume of normal operability amounts to approximately 53 million board feet.

Infrastructure: One log transfer facility and one camp are needed to operate in this area. There is, however, an existing old camp that could be utilized in conjunction with an operation in this area.

Operating Logistics: Access to this area is good. Most of this area is characterized by rough topography and a heavy concentration of streams. Road construction is expected to be difficult in this area, with the exception of the valley bottoms. The average length of the logging season is expected to be 7 months.

Selection Potential: This area appears to be a poor selection candidate since it appears that only the valley bottoms will be accessible for logging.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-8

FARRAGUT BAY
VCU 90

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 14,963 acres. CFL acreage constitutes about 53% of the total area in this VCU. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 145 million board feet.

Infrastructure: One log transfer facility and one land-based or float camp will be needed to operate in this area.

Operating Logistics: This area is readily accessible. Topographic conditions range from valley bottoms to steep side slopes. There is a heavy concentration of streams in this area and much of the area is classified as Class 1 habitat. Road construction conditions in the area vary from easy in the valley bottoms to difficult at the higher elevations. The average length of the logging season is expected to be about 7-1/2 months.

Selection Potential: This area is believed to be a poor selection potential, although it would be easy to inner-connect road systems with adjacent areas.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-9

PERIL STRAIT
VCU 295

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 4,684 acres. CFL acreage constitutes about 39% of the total area in this VCU. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 62 million board feet.

Infrastructure: One log transfer facility and one land-based or float camp would be needed to operate in this area.

Operating Logistics: This area is readily accessible and is characterized by moderate terrain with a lake system that is classified as a high habitat area. The area also includes an important watershed. Road construction in the area is expected to be average. The length of the operating season is expected to be approximately 8 months.

Selection Potential: This area appears to be a poor selection candidate.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-10

LEMESURIER ISLAND-ICY STRAIT
VCU 186

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 5,213 acres. CFL acreage constitutes about 78% of the total area in this VCU. CFL timber stands average 18 MBF/acre. Total timber volume of normal operability amounts to approximately 64 million board feet.

Infrastructure: Two log transfer facilities and one land-based camp will be needed to operate in this area.

Operating Logistics: This area is in a remote location with very difficult access. Topographic conditions are more difficult than average. There are no significant streams in the area. Road construction conditions in the area range from average to difficult. The length of the operating season is expected to be about 7 months.

Selection Potential: This area is believed to have poor potential as a selection candidate, due ue to its isolated location and lack of harbors. One possibility may be to select this area in conjunction with an area near Idaho Inlet.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-11

SHELTER ISLAND - LYNN CANAL
VCU 124

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 2,647 acres. CFL acreage constitutes about 43% of the total area in this VCU. CFL timber stands average 16 MBF/acre. Total timber volume of normal operability amounts to approximately 23 million board feet.

Infrastructure: Two or three log transfer facilities would be needed to operate in this area. Workers would be able to commute to this area.

Operating Logistics: This area is readily accessible and is characterized by average topographic conditions. There are no significant streams in the area. Road construction conditions in the area are believed to be average. The normal logging season is expected to be about 7 months in this area.

Selection Potential: This area is believed to be a poor selection candidate since the area consists of two islands. In addition, the total amount of commercial forestland area is very small with a low average volume per acre.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-C-12

BERNERS BAY LYNN CANAL
VCU 16

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 8,006 acres. CFL acreage constitutes about 47% of the total area in this VCU. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 46 million board feet.

Infrastructure: One log transfer facility will be needed and one floating camp. Workers could possibly commute to the site.

Operating Logistics: This area is readily accessible with easy to very difficult topographic conditions. There are few streams in the area. Road construction conditions will range from average to difficult. The average length of the logging season is expected to be approximately 7 months in this area.

Selection Potential: This area is believed to be a poor potential selection candidate.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

OPTION CODE: II-D

EXCHANGE LUD III AND IV LANDS

Shee Atika would exchange the Cube Cove properties for LUD III and LUD IV lands in the Tongass National Forest (TNF). The Cube Cove properties would be reclassified as wilderness monument.

This exchange would result in a net loss to the TNF commercial forestland/timber base subject to the 4.5 bbf/decade cut. The USFS contends that the ability of the TNF to maintain a sustained yield of 4.5 bbf/decade is tenuous. Consequently, any selection of LUD III or LUD IV lands may reduce the per decade harvest available from the TNF.

There is a potential modification to this option which may circumvent the noted problem surrounding the 4.5 bbf/decade harvest. Shee Atika would exchange Cube Cove properties to the USFS for selection rights in TNF LUD III and IV. The Cube Cove properties would be classified as a special management area that would revert to wilderness monument status after a designated period of time (Note: a similar concept was advanced in HR 2199, see Appendix. During the interim, the timber volume would be included as part of the commercial TNF commercial forest base available to meet the 4.5 bbf ANILCA mandate. Harvest of timber from the Cube Cove properties would be prohibited. This volume would be held in reserve to meet the 4.5 bbf harvest. If, at a later date, the remaining timber volume on the TNF is inadequate to meet the 4.5 bbf harvest the Cube Cove timber could be harvested. Authoritzation to harvest the Cube Cove properties would require approval of the Secretary of Agriculture and upon showing by the Regional Forester that inadequate volume is available to meet the 4.5 bbf requirement.

Twenty-one blocks consisting of a total of 68 LUD III or IV VCUs were identified for further evaluation for exchange consideration. The Yakutat block consisting of two LUD IV VCUs were in close proximity with the LUD I VCU. This area including LUD I VCU was evaluated for a single unit under the LUD I exchange option. In some instances, LUD III and IV lands may fully or partially occur in a primary contract, contingency or five-year timber sale area. These factors did not exclude an area from evaluation as an exchange option.

The following sections evaluate each potential exchange area and compare the area with the four VCUs (147, 148, 149 and 150) encompassing the Shee Atika Cube Cove properties. The U.S. Forest Service VCU statistics were used, instead of the actual statistics for the Shee Atika Cube Cove properties, in order to maintain uniformity in the information used for comparison.

Option Code II-D-1

WEST CHOLMONDELEY
VCUs 674-676

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 20,229 acres. CFL acreage constitutes about 56% of the total area in these VCUs. CFL timber stands average 31 MBF/acre. Total timber volume of normal operability amounts to approximately 383 million board feet.

Infrastructure: Operations in this area will require two log transfer facilities and one floating camp.

Operating Logistics: This area is readily accessible and is characterized as having average topographic conditions. There is a high concentration of streams in the area. Road construction conditions in the area are rated as average. The length of the logging season is estimated to be 8 months.

Selection Potential: This area is rated as having good selection potential.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-2

POLK INLET
VCUs 614-618, 620

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 32,252 acres. CFL acreage constitutes about 46% of the total area in these VCUs. CFL timber stands average 26 MBF/acre. Total timber volume of normal operability amounts to approximately 618 million board feet.

Infrastructure: Two log transfer facilities and one floating camp will be needed to operate in this area.

Operating Logistics: This area is easily accessible. Topography in the area is average with a high concentration of streams in the area. Road construction conditions are rated as average. The length of the logging season is estimated to be 8 months.

Selection Potential: This area is rated as having good selection potential.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-3

LANCASTER COVE
VCU 679

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 12,469 acres. CFL acreage constitutes about 75% of the total area in this VCU. CFL timber stands average 34 MBF/acre. Total timber volume of normal operability amounts to approximately 330 million board feet.

Infrastructure: Operations in this area can use an existing log transfer facility, but will require one floating camp.

Operating Logistics: This area is readily accessible and is characterized as having gentle terrain. There is a low to moderate concentration of streams in the area. Road construction conditions are rated as being average. The length of the logging season is estimated to be about 8 months.

Selection Potential: This area is rated as having good selection potential. There may be a tie to the Kootznoowoo operations.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-4

STEELHEAD CREEK, CONTROL LAKE
VCUs 576, 595 and 596

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 24,619 acres. CFL acreage constitutes about 51% of the total area in these VCUs. CFL timber stands average 27 MBF/acre. Total timber volume of normal operability amounts to approximately 530 million board feet.

Infrastructure: Operations in this area can utilize an existing log transfer facility and a land-based camp.

Operating Logistics: This area is readily accessible. Topographic conditions are rated as being gentle to average. There is a moderate concentration of streams in the area as well as important watersheds in VCUs 576 and 596. Road construction conditions are rated as average in this area. The length of the logging season is estimated to be about 8 months.

Selection Potential: This area is rated as being a good selection candidate. There appears to be an opportunity to tie a road system into Sealaska Corporation ownership in the area.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

HECETA ISLAND
VCUs 561 and 562

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 19,195 acres. CFL acreage constitutes about 84% of the total area in these VCUs. CFL timber stands average 28 MBF/acre. Total timber volume of normal operability amounts to approximately 501 million board feet.

Infrastructure: Operations in this area can make use of an existing log transfer facility and a land-based camp in this area.

Operating Logistics: This area is readily accessible and is characterized as having average topographic conditions. There is a low to moderate concentration of streams in the area. Road construction conditions are rated as average in the area. The length of the logging season is expected to be about 8 months.

Selection Potential: This area is rated as being a good selection candidate. Heavy cutting was carried out in the area about 20 years ago.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-6

FRESHWATER BAY
VCUs 214 and 215

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 14,564 acres. CFL acreage constitutes about 49% of the total area in these VCUs. CFL timber stands average 24 MBF/acre. Total timber volume of normal operability amounts to approximately 240 million board feet.

Infrastructure: One log transfer facility and one land-based camp will be needed to operate in this area.

Operating Logistics: This area is moderately accessible and is characterized by difficult terrain except for the valley bottoms. There is also a heavy concentration of streams in the area. Road construction conditions are average in the valley bottoms, but difficult at higher elevations. The logging season is estimated to be about 7 months in this area.

Selection Potential: This area is rated as having good selection potential. Development of this area might possibly be linked with False Bay and Gypsum Creek, but presently there is no intertie road in the area.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-7

FALSE BAY GYPSUM CREEK
VCUs 210 and 212

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 13,911 acres. CFL acreage constitutes about 54% of the total area in these VCUs. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 200 million board feet.

Infrastructure: Two or three log transfer facilities and one land-based camp will be needed to operate in this area.

Operating Logistics: Access to this area is rated as moderate. Most of this area contains rough topography, except for the valley bottoms. There is a moderate concentration of streams in the area. Road construction conditions are rated as difficult. The length of the logging season is estimated to be about 7 months in this area.

Selection Potential: This area has good selection potential. There may be some difficulty in linking up road systems in this area.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-8

KADASHAN RIVER TENAKEE INLET

VCU 235

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 17,787 acres. CFL acreage constitutes about 53% of the total area in this VCU. CFL timber stands average 24 MBF/acre. Total timber volume of normal operability amounts to approximately 293 million board feet.

Infrastructure: One log transfer facility and one land-based or float camp will be needed to operate in this area.

Operating Logistics: This area is readily accessible and is characterized by moderate topography. There is a heavy concentration of streams in the area with the area classified as important habitat. Road construction conditions are rated as being average. The length of the logging season is expected to be about 8 months.

Selection Potential: This area has good selection potential.

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COMPARATIVE CUBE COVE AREA
STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-9

CARROLL INLET
VCU 746

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 20,081 acres. CFL acreage constitutes about 65% of the total area in this VCU. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 235 million board feet.

Infrastructure: One log transfer facility and one land-based camp are needed to operate in this area. There is a possibility of using an existing camp in the area.

Operating Logistics: This area is easily accessible and is characterized as having difficult terrain. There is a low concentration of streams in the area. Road construction conditions in the area are rated as being average to difficult. The length of the logging season is estimated to be 8 months.

Selection Potential: This area is rated as having moderate selection potential.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-10

CLEVELAND PENINSULA
VCUs 709-723

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 98,393 acres. CFL acreage constitutes about 53% the total area in these VCUs. CFL timber stands average 20 MBF/acre. Total timber volume of normal operability amounts to approximately 1,575 million board feet.

Infrastructure: One or two log transfer facilities and one land-based camp will be needed to operate in this area.

Operating Logistics: The area is easily accessible. Topographic conditions are rated as average. There is a high concentration of streams in the area. VCU 716 is rated as being an important habitat area. Road construction conditions are rated as average to moderately difficult in the area. The length of the logging season is estimated to be 8 months.

Selection Potential: The area has moderate selection potential. The total area covers an extensive amount of land, some of which has very little timber. Sealaska has some ownership in the area.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-11

NOSSUK
VCU 591

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 4,805 acres. CFL acreage constitutes about 55% of the total area in this VCU. CFL timber stands average 26 MBF/acre. Total timber volume of normal operability amounts to approximately 112 million board feet.

Infrastructure: One log transfer facility and one floating camp will be needed to operate in this area.

Operating Logistics: This area is readily accessible with gentle to easy topographic conditions. There is a low concentration of streams in the area. Road construction conditions are rated as being easier than average. The length of the logging season is estimated to be about 8 months.

Selection Potential: This area is rated as having moderate selection potential. There is a possibility of developing this area in conjunction with Heceta.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-12

KOSCIUSKO ISLAND
VCUs 543, 544 and 546

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 29,507 acres. CFL acreage constitutes about 86% of the total area in these VCUs. CFL timber stands average 26 MBF/acre. Total timber volume of normal operability amounts to approximately 753 million board feet.

Infrastructure: Operations in this area can make use of an existing log transfer facility and land-based camp.

Operating Logistics: This area is readily accessible and is characterized as having gentle terrain. There is a low to moderate concentration of streams in the area. Road construction conditions are easy to average. The length of the logging season is estimated to be about 8 months.

Selection Potential: This area is rated as having moderate selection potential. The area has been heavily cutover and contains high site lands. Some of the area was cutover as long as 40 years ago.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

NUTKWA VCU
VCU 685

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 12,585 acres. CFL acreage constitutes about 73% of the total area in this VCU. CFL timber stands average 29 MBF/acre. Total timber volume of normal operability amounts to approximately 215 million board feet.

Infrastructure: One log transfer facility and one floating camp will be needed to operate in this area.

Operating Logistics: This area is quite remote with difficult topographic conditions. There is a low concentration of streams in the area. Road construction conditions are rated as being difficult. The length of the logging season is estimated to be 8 months.

Selection Potential: The selection potention is rated as moderate for this area. This area is a potential Hydaburg Corporation selection.

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COMPARATIVE CUBE COVE AREA
STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-14

MUD BAY (ICY STRAIT) LOON LAKES
VCUs 193-194

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 17,714 acres. CFL acreage constitutes about 39% of the total area in these VCUs. CFL timber stands average 24 MBF/acre. Total timber volume of normal operability amounts to approximately 318 million board feet.

Infrastructure: One log transfer facility and one land-based camp will be needed to operate in this area.

Operating Logistics: This area is in a remote location and is characterized by average topographic conditions. There is a moderate concentration of streams in the area and a few small lakes. The area also contains a quality watershed. Road construction conditions in the area are rated as average. The length of the logging season is expected to be about 7 months.

Selection Potential: The potential for selection of this area is rated as being moderate. Development of this area could tie in with operations near Idaho Inlet.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-15

ENDICOTT, SAND BAY, WINDHAM, CHUCK RIVER
VCUs 68-74 and 76

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 42,002 acres. CFL acreage constitutes about 38% of the total area in these VCUs. CFL timber stands average 18 MBF/acre. Total timber volume of normal operability amounts to approximately 548 million board feet.

Infrastructure: Three log transfer facilities and one land-based camp or possibly a commute will be necessary to operate in this area.

Operating Logistics: This area is in a remote location and typographic conditions are average to difficult. There is a low concentration of streams in the area. Road construction conditions in the area are rated average to difficult. The length of the logging season is expected to be about 7 months.

Selection Potential: This area is rated as having moderate selection potential. Development in this area may tie to operations at Endicott Arm located in VCU 66. The use of the Hobart Bay log transfer facility is a possibility. This entire area includes some Goldbelt ownership.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-16

DALL ISLAND
VCUs 640, 641, 643, 645-648, 650-654, 656 and 659

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 37,935 acres. CFL acreage constitutes about 67% of the total area in these VCUs. CFL timber stands average 22 MBF/acre. Total timber volume of normal operability amounts to approximately 608 million board feet.

Infrastructure: Operations in this area can utilize an existing log transfer facility and an existing camp.

Operating Logistics: This area is very remote and is characterized as having very difficult topography in which to operate. There is a high concentration of streams in the area. VCU 659 encompasses an important watershed. Road construction conditions in the area are rated as extremely difficult. The length of the logging season in the area is estimated to be 8 months.

Selection Potential: This area is rated as having poor selection potential. This area has very difficult terrain. The timber must go across Sealaska ownership. Recovery of volume requires other than conventional logging system. Sealaska Corporation has ownership in several of the VCUs in this area.

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COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-17

MOIRA SOUND
VCU 692

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 10,465 acres. CFL acreage constitutes about 45% of the total area in this VCU. CFL timber stands average 22 MBF/acre. Total timber volume of normal operability amounts to approximately 170 million board feet.

Infrastructure: One log transfer facility and one floating camp will be needed to operate in this area.

Operating Logistics: This area is readily accessible with easy to average topographic conditions. There is a low concentration of streams in the area. Road construction conditions are rated as easy to average. The length of the logging season is estimated to be 8 months.

Selection Potential: This area is rated to have low selection potential.

* *

COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-18

SUEMEZ ISLAND
VCUs 634 and 635

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 12,580 acres. CFL acreage constitutes about 61% of the total area in these VCUs. CFL timber stands average 22 MBF/acre. Total timber volume of normal operability amounts to approximately 230 million board feet.

Infrastructure: Four or five log transfer facilities and one floating camp will be needed to operate in this area.

Operating Logistics: This area is in a remote location with average to difficult topographic conditions. There is a heavy concentration of streams in the area. Road construction conditions are rated average to difficult. The length of the logging season is expected to be about 8 months.

Selection Potential: This area is rated as a poor selection candidate. The difficult terrain in this area does not appear to allow for a road intertie.

* *

COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-19

NOYES ISLAND
VCU 567

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 19,015 acres. CFL acreage constitutes about 77% of the total area in this VCU. CFL timber stands average 22 MBF/acre. Total timber volume of normal operability amounts to approximately 229 million board feet.

Infrastructure: Two log transfer facilities and one floating camp will be needed to operate in this area.

Operating Logistics: This area is a remote location and is characterized by average to very difficult topographic conditions. There is a low concentration of streams in the area. Road construction conditions in the area are rated as being average to very difficult. The length of the logging season is expected to be about 8 months.

Selection Potential: This area is believed to have poor selection potential. The southern and western part of the area is heavily exposed to the Gulf of Alaska. A road intertie in the area does not appear to be feasible.

* *

COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-20

THORNE ARM
VCU 756

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 5,776 acres. CFL acreage constitutes about 68% of the total area in this VCU. CFL timber stands average 25 MBF/acre. Total timber volume of normal operability amounts to approximately 139 million board feet.

Infrastructure: There is an opportunity to use an existing log transfer facility in this area. One floating camp will be needed.

Operating Logistics: This area is easily accessible and is characterized as having average topographic conditions. There is a low concentration of streams in the area. Road construction conditions are rated as average in this area. The length of the logging season is estimated to be about 8 months.

Selection Potential: This area is rated as having low selection potential.

* *

COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

Option Code II-D-21

PERIL STRAIT (HEAD END)
VCU 262

Commercial Forestland Statistics: Total commercial forestland (CFL) in the area amounts to approximately 1,766 acres. CFL acreage constitutes about 20% of the total area in this VCU. CFL timber stands average 21 MBF/acre. Total timber volume of normal operability amounts to approximately 32 million board feet.

Infrastructure: One log transfer facility and one floating camp would be needed to operate in this area.

Operating Logistics: This area is readily accessible with gentle topography in the valley bottoms and steep and difficult terrain on the remaining areas. There are very few streams in the area. Road construction conditions are rated as average in this area. The length of the logging season is expected at about 7 months in this area.

Selection Potential: This area is rated as a poor selection candidate.

* *

COMPARATIVE CUBE COVE AREA STATISTICS: VCUs 147-150

- Total CFL = 32,760 acres; 57% of total area; average of 27 MBF/acre. Total timber volume of normal operability amounts to approximately 587 million board feet.
- One log transfer facility and one land-based camp needed.
- Remote location; easy to moderate topography; moderate number of streams; three high recreation-use lakes.
- Easier than average road construction conditions; estimated 8-month logging season.

OPTION CODE: II-E

EXCHANGE FOR SEALASKA CORPORATION LANDS

Shee Atika would be allowed to select all their entitlement from Sealaska Corporation lands or overselection areas. Upon Shee Atika selection of Sealaska overselections or properties, the Cube Cove properties would revert to monument wilderness status. Sealaska would receive compensation for giving lands to Shee Atika plus compensation for lost subsurface values.

Shee Atika selection from Sealaska overselections is not a viable option. This conclusion is derived from an analysis which indicates that any surplus, to Sealaska's entitlement, will be noncommercial forestland or low volume commercial forestlands. Thus, this option is limited to Shee Atika receiving title to presently conveyed lands or lands that will be conveyed to Sealaska in the future. The selection of Sealaska Corporation lands by Shee Atika would require developing a compensation package acceptable to Sealaska Corporation before any exchange would occur.

The feasibility of this option is predicated upon the ability to compile a complete settlement compensation agreement for Shee Atika and Sealaska that adequately compensates all parties. This exchange and compensation requirements are complex and could take considerable time to reach a final settlement agreement. This option provides entrepreneurial opportunities for Sealaska to widely diversify landholding, assets, etc. Sealaska must determine if this opportunity is consistent with corporate investment strategies.

This option has not identified sites on Sealaska lands for selection by Shee Atika, or identified any elements of a compensation package for Sealaska Corporation, required as a result of an exchange.

OPTION CODE: II-F

TRANSFER OF KOOTZNOOWOO CHOLMONDELEY SOUND PROPERTIES TO SHEE ATIKA

Kootznoowoo would transfer their Cholmondeley Sound properties including remaining selection rights to Shee Atika. In turn, Kootznoowoo would receive as of yet undefined compensation package consistent with Kootznoowoo investment objectives. The transfer may require additional compensation to Shee Atika. The Cube Cove lands would become part of the Admiralty wilderness.

This option has not defined a compensation package to Kootznoowoo for exchange of their Cholmondeley Sound property. The compensation package would likely include cash, surplus State and Federal property (likely to include commercial real estate, recreation and timberlands), oil certificates and other options which would expand and diversify the Kootznoowoo portfolio. Although this option proposes a simple resolution of the present controversy, the compensation package particularly for Kootznoowoo may be difficult to compile.

This option does not attempt to compare the value of the Cube Cove properties with the Cholmondeley properties to determine if Shee Atika would require additional compensation by transfer of Kootznoowoo properties to Shee Atika. Further, the report does not attempt to identify any elements to be included in a compensation package for Kootznoowoo.

OPTION CODE: II-G

EXCHANGE CUBE COVE PROPERTIES FOR STATE LANDS

Shee Atika would exchange the Cube Cove properties for State forestlands. The Cube Cove lands would be transferred to the State of Alaska Department of Natural Resources and would be managed in accordance with State objectives, e.g., State park or State forestlands.

Preliminary evaluation of this option identified the following potential constraints:

- The State lands within Southeast Alaska are typically small tracts (except for Haines) which would not be economically viable commercial forest lands.
- The Haines forest already has contract commitments. Further, the State has made substantial loans to maintain sawmill operations in association with the contract commitment. Selections by Shee Atika would reduce both the available harvest under the contract and borrower's ability to repay State loans.
- An exchange will require approval by the Alaska legislature.
- Other State forestlands (e.g. Yakataga, and the new forest near Fairbanks) are too far from Shee Atika's base of operation and do not contain the type and values of timber occurring on the Cube Cove properties.

Due to the noted constraints, this option did not attempt to identify or evaluate any State lands that might be suitable for exchange.

OPTION CODE: III-A

PURCHASE CUTTING RIGHTS AND EXCHANGE FOR TNF CUTOVER LANDS

Shee Atika would select a total of 23,073 acres (equal to the acreage at Cube Cove) plus any negotiated land from LUD III and IV cutover lands (first rotation timber removed). This selection would provide a commercial forestland base for the corporation. The Federal Government or possibly a consortium of Federal and State agencies and/or conservation and environmental organizations would purchase Shee Atika's cutting rights at Cube Cove. Upon purchase the Cube Cove land would be classified as wilderness. Purchase would be based upon fair market value of stumpage at date of conveyance.

Cube Cove resolution options suggesting exchange of Cube Cove properties for other lands in the TNF encounter reoccurring constraints. The exchange options are limited because LUD I and LUD II lands have high nontimber values where protection may be incompatible with timber harvest, while LUD III and IV lands are already committed to meet the 4.5 billion board feet decade harvest. This option circumvents these constraints by purchasing Shee Atika's Cube Cove timber cutting rights, while at the same time enabling Shee Atika to retain a permanent land base by selection of LUD III or IV lands (excluding first rotation timber). Since Shee Atika is compensated for the first rotation cutting rights, they would not receive first rotation cutting rights in the exchange lands. The first rotation cutting rights, in the exchange lands, would remain with the USFS to meet the 4.5 bbf harvest. This option avoids the conflict with the 4.5 bbf harvest because the TNF, in second and subsequent rotations, will produce at a level substantially above its current capacity (approximately 4.5 bbf/decade).

Compensation:

Payment could be in the form of an annual annuity based on an assumed equal harvest level through the first rotation. The rotation period and corresponding annual payments would be predicated upon the period of time between harvest of old growth and point in time when the second crop is ready for harvest or between 50 and 100 years.

- The annual cash payment to Shee Atika would be adjusted annually for inflation/deflation based upon the consumer price index or some other acceptable standard.
- The annual payment based on the specific rotation age would be roughly as follows (assuming initial stumpage value of 176 million dollars):

Rotation (years)	Annual Payment (Millions of Dollars)
50	3.520
60	2.933
70	2.514
80	2.200
90	1.956
100	1.760

If it is agreeable to all parties, a single up-front cash payment could be considered in lieu of annual payments. The cash payment can be calculated by first determining the projected annual payment, then determining the net present value of the annual annuity using the appropriate discount rate. For example, assuming a 60-year rotation and a 6% discount rate, the single payment would amount to approximately $47 million, plus any additional compensation related to costs incurred to date.

The example used in this option was included to provide a relative idea of the size of the compensation package that might be associated with this option. There are several variables and approaches to this option which would affect the actual values. Pursuit of this option would require active participation by all parties to reach accord on the approach and variables that would be used to calculate the compensation package.

Although this option proposes exchanging the Cube Cove property (excluding timber), possible selection sites were not identified. Present information indicates that the number of sites with high site class characteristics (i.e. ability of the land to grow trees) would be more than adequate to meet Shee Atika's entitlement.

Appendix

96TH CONGRESS
1ST SESSION

H. R. 2199

To designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, Wild and Scenic Rivers and National Wilderness Preservation System, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1979

Mr. HUCKABY introduced the following bill; which was referred jointly to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries

---

A BILL

To designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, Wild and Scenic Rivers and National Wilderness Preservation System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alaska National Interest Lands Conservation Act".

I—E●

"South Misty Fjords Special Management Area", dated October 1978;

(8) West Admiralty Island Special Management Area of approximately four hundred and sixty-seven thousand acres as generally depicted on a map entitled "West Admiralty Island Special Management Area", dated October 1978; and

(9) Yakutat Forelands Special Management Area of approximately two hundred and sixty-nine thousand acres as generally depicted on a map entitled "Yakutat Forelands Special Management Area", dated October 1978.

MANAGEMENT RULES FOR SPECIAL MANAGEMENT AREAS

SEC. 609. (a) APPLICABLE LAWS.—Except as otherwise provided in this section, national forest system lands designated as special management areas under section 608 of this Act shall be managed in accordance with the laws applicable to such lands.

(b) TIMBER SALES.—No timber located on national forest system lands in special management areas shall be sold, unless and until the requirements of subsections (d) and (e) of this section have been met. The timber volume on these lands shall be included in determining the annual allowable sale quantity on the Tongass National Forest. Nothing in this subsection shall prevent the Secretary from taking such measures as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(c) WITHDRAWALS.—All national forest system lands in special management areas are hereby withdrawn, subject to valid existing rights, from location, entry, and patent under the United States mining laws (30 U.S.C. 22-54). Where consistent with the land management plan for the area, the Secretary may classify lands within special management areas as suitable for locatable mineral exploration and development and open such lands to location entry and patent under the United States mining laws (30 U.S.C. 22-54). Subject to valid existing rights, all mining claims located within any special management area shall be subject to such reasonable regulations as the Secretary may prescribe to assure that mining will, to the maximum extent practicable, be consistent with protection of the scenic, scientific, cultural, and other resources of the area and any patent issued after the date of enactment of this Act shall convey title only to the minerals together with the right to use the surface of lands for mining purposes subject to such reasonable regulations as the Secretary may prescribe. With respect to those lands in the South Misty Fjords Special Management Area comprising the "Blossom and Wilson River Drainages", as depicted on the map referred to in section

608(7), the Secretary is authorized and directed to promulgate such regulations as he determines necessary to protect the water quality and quantity of and to prevent any adverse environmental degradation of the streams and other bodies of water in such lands.

(d) WAIVER.—The Secretary of Agriculture is directed to monitor timber supply and demand in southeastern Alaska. If, at any time after ten years after the date of enactment of the Act, the Secretary finds that timber in any special management area must be sold to maintain the timber supply to dependent industry at a rate of five hundred and twenty million board feet per year, he shall transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, a request for a waiver of the prohibition on timber sales established in subsection (b) of this section. The proposed waiver shall describe the lands affected and the amount of timber on such lands which is anticipated to be sold. The request shall be accompanied by a report setting forth the basis for the Secretary's findings.

(e) SUBMISSION TO CONGRESS.—No waiver shall become effective unless within sixty calendar days of continuous session of the Congress after the request has been submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular

Affairs of the House of Representatives, the Senate and the House of Representatives pass a concurrent resolution approving such waiver.

(f) APPLICABLE RULES.—For purposes of this subsection (e)—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

(3) the term "resolution" means a concurrent resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the waiver of the statutory prohibition on timber sales contained in the report of the Secretary of Agriculture submitted to the Congress on 19 ."; the blank space therein shall be filled with the date on which the Secretary submits his report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(g) APPLICATION OF OTHER PROVISIONS.—Except as otherwise provided in this section, provisions of section 8(d)

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November 16, 1983

Senator Mark Andrews
Chairman, Senate Select Committee on Indian Affairs
U.S. Senate
Hart Building, Room 838
Washington, D.C. 20510

Re: Senate Select Committee on Indian Affairs
Oversight Hearings on Shee Atika, Inc.

Dear Chairman Andrews:

Enclosed please find a copy of my letter to Richard A. Baenen, Esq. responding to certain comments made by the Sierra Club and Angoon at the Senate Select Committee's Oversight Hearings on Shee Atika, Inc. I request that it be made a part of the record.

Sincerely,

BAENEN, TIMME, DE REITZES
& MIDDLETON

Jacquelyn R. Luke

Jacquelyn R. Luke

JRL:ef

Enclosure

cc: ✓ Richard A. Baenen, Esq.

SA 7.6

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November 10, 1983

Mr. Richard Baenen, Esq.
Baenen, Timme, De Reitzes & Middleton
1049 30th Street, N.W.
Washington, D.C. 20007

Re: Shee Atika--Senate Select Committee
Oversight Hearings

Dear Richard:

As you recall, at the hearings before the Senate Select Committee on Indian Affairs on the problems being experienced by Shee Atika in obtaining its Settlement Act entitlements, both the Sierra Club and Angoon protested vigorously against the assertions made that the Sierra Club was providing substantial aid and assistance to Angoon, and controlling the litigation for Angoon against Shee Atika. The Sierra Club and Angoon's protestations do not comport with reality. As you know, I have been involved in all phases of the litigation brought by the Sierra Club and Angoon against Shee Atika. The specifics of that litigation demonstrate overwhelmingly that the Sierra Club is the primary and controlling party in the litigation.

To date, the bulk of the litigation brought by the Sierra Club and Angoon has occurred before state agencies and in the state court system. These proceedings consist of one adjudicatory hearing before the Alaska Department of Environmental Conservation (DEC), three administrative proceedings before the Alaska Department of Natural Resources (DNR), two actions in Alaska Superior Court, and one ongoing administrative proceeding. In not one of these proceedings did Angoon have its own counsel. The Sierra Club Legal Defense Fund "represented" Angoon in all of these proceedings. It also represented the Sierra Club in the same proceedings. At no time did the Sierra Club Legal Defense Fund file any separate pleadings or take any other action specifically for the benefit of Angoon. Rather, all pleadings, witnesses, and other actions were filed and taken on behalf of both Angoon and the Sierra Club.

Over the past two years that these proceedings have been ongoing, the Sierra Club Legal Defense Fund has expended thousands of hours of legal time in representing Angoon.

In the one federal action brought by Angoon and the Sierra Club against Shee Atika challenging the federal permitting of Shee Atika's log transfer facility, Angoon is technically represented by separate counsel. Their local counsel, Lewis Gordon, Esq., however, has represented the Sierra Club in the past, and currently represents it in two lawsuits brought by Shee Atika. Angoon's other counsel are attorneys in the San Francisco law firm of Furth, Fahrner, Bluemle and Mason. I have been told that members of this firm are or have been on the Board of Directors of the Sierra Club and/or the Sierra Club Legal Defense Fund. While I cannot vouch for the truth of this, it is a matter which I assume could be easily ascertained by the Committee.

Irrespective of the relationship between Angoon's lawyers and the Sierra Club, however, the attorneys for the Sierra Club appear to be firmly in charge of the litigation. Counsel for Angoon, when consulted by us on various matters concerning the case, refused to make any decisions, either procedural or substantive, without first obtaining the approval of the Sierra Club's attorneys. Indeed, in some instances when counsel for Angoon has given their tentative approval, that approval has been rescinded when counsel for the Sierra Club has objected. The Sierra Club's lawyer has signed documents in the case as "attorney for plaintiffs," although Angoon, and not the Sierra Club is the plaintiff. This summer, a number of pleadings were filed in an attempt to stop Shee Atika from engaging in helicopter logging. Those pleadings were prepared by the Sierra Club Legal Defense Fund attorneys in Juneau, and then sent to Anchorage for signing and filing by Angoon's attorney.

As one of Shee Atika's lawyers, I have obviously not had the opportunity to be privy to the Sierra Club's internal strategy sessions. I have, however, witnessed a number of incidents which demonstrates the Sierra Club's total control over the actions against Shee Atika. For example, several public hearings have been held in Angoon as part of the permitting process for Shee Atika's log transfer facility. Attorneys for the Sierra Club have been present at all of those hearings. No other attorneys for Angoon were present. The Sierra Club's attorneys were actively involved in organizing the testimony presented at the hearing by the witnesses of Angoon. When a representative of the U.S. Army Corps of Engineers traveled to Angoon to obtain additional information for the environmental impact statement on the proposed log transfer facility, she was accompanied to the village by the Sierra Club's attorney, and was given by that attorney a list of people within the village with whom she could speak. At the adjudicatory hearing before the Department of Environmental Conservation, the only witness to testify on the subsistence needs of the residents of Angoon was a legal intern from the Sierra Club Legal Defense Fund, who testified concerning her efforts to get evidence on the question of subsistence use by the residents of Angoon.

The testimony of many of the residents of Angoon at the various public hearings which have been held on Shee Atika's proposed activities demonstrates that in many instances, they have little knowledge of Shee Atika's plans, or the location of the lands at issue. The residents of Angoon have testified vigorously that Fishery Point and Fishery Creek are important subsistence areas. Neither of these areas, however, are on Shee Atika's land, or will be impacted by its proposed activities. The lack of such basic knowledge raises questions to me as to the authenticity of the professed concern for subsistence, notwithstanding the arguments vigorously put forward to the contrary by the Sierra Club.

Sincerely,

BAENEN, TIMME, DE REITZES
& MIDDLETON

Jacquelyn R. Luke
Jacquelyn R. Luke

JRL:ef

SHEE ATIKA, INCORPORATED

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PHONE (907) 747-3539
or 747-3534

November 16, 1983

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
Senate Hart Bldg. 83H
Washington, D.C. 20510

ATTN: Jerry Reichlan

Dear Senator Andrews:

In response to Sierra Club input I would like to enter the following response in the record pertaining to hearings of November 2nd and 3rd in the matter of Shee Atika, Inc.

This date Shee Atika was presented with a "proposal" prepared by Angoon, submitted by Kanalku Corportion (Kootznoowoo) and represented by the Sierra Club. The "proposal" is also listed in the Sealaska Settlement Options paper of October 28, 1983 as the Polk Inlet area. Shee Atika has generally reviewed this option in our earlier response to the Committee.

Although Angoon and the Sierra Club presented and represented the information as a "proposal", Shee Atika views the data merely as a "concept" which falls woefully short of a valid proposal. Basic information needed for Shee Atika, or anyone else, to evaluate this, "exchange option" has not been addressed. This same information is needed by the Sierra Club before it can consider their presentation as a proposal.

The basic underlying question for the Sierra Club should be what does Shee Atika want to make any proposal attractive to them. The second question for the Sierra Club should be what preliminary factors need to be addressed before any concept could be considered a meritorious proposal. Neither of these considerations have been addressed by the Sierra Club to date. As Shee Atika is content with its land entitlements under ANILCA and given the fact that our current economic distress is a result of Sierra Club litigation against us, it should be obvious that Shee Atika would like cash incentives. Also, as with all other ANCSA Corporations, we have an affinity for the land and Shee Atika would be interested in land allocation considerations. In addition, as Shee Atika's shareholders have not received any tangible benefits as prescribed by ANCSA it should be intuitively obvious that longevity of time required to implement any Sierra Club offer is also a major concern.

Shee Atika feels that any "proposal" from the Sierra Club or any other party must have merit before it can be considered a proposal. In determining the merit of a proposal regarding Federal lands in Southeast Alaska there are some basic assurances which must be received before even basic merit can be established. These assurances must be in the form of "nonobjection" by all third parties including State and Federal Agencies, conservationist groups, local communities and local ANCSA Corporations, the timber industry and appropriate political factions representing the U.S. Government since, in this case, both Federal Lands and undoubtedly dollars would be involved. After the above factors are considered and cleared, a basic projection of time involved to culminate the transaction can be projected. To date, none of these factors have been considered.

Although this concept presented by the Sierra Club is different from discussions of the past nine years in that this is the first time any "proposal" has been made in writing, the pattern of a slip - shod, "pie in the sky" philosophy remains. Surely no businessman in the United States would consider the Sierra Club concept a geniune "proposal". Also, I'm sure Senator Murkowski had hoped for something more concrete than the concept submitted by the Sierra Club when he accepted Mr. Howard's offer to submit a proposal for a settlement to the issue.

Once a proposal is found to have merit and is found to be of interest to Shee Atika the next step in the process would be to develop technical data and an intensive appraisal of the proposal.

However, knowing the political climate of Southeast Alaska and U.S. Forest Service and Timber Industry concerns regarding the availability of timber suppply, I am confident that the Sierra Club concept will prove to be void of merit. As stated in their discussion of the concept, the area involved lies in Louisana Pacifics' (L.P.K.) timber sale contingency area. What was not stated was that L.P.K. is planning to start operations in this area during the Spring of 1984 and has already completed much "lay out" work.

As one views the area from maps, it is obvious that six major streams transect the area rendering a high probability of fisheries concerns and intensive eagle habitat areas associated therewith. Steepness of terrain indicates that a complex and expensive road system would be required, and, in all probability three log transfer facilities would be needed to properly service the area. Tidal flats and extensive frontage of the area on Polk Inlet and McKenzie Inlet also indicate that significant eagle habitat would be effected and Coastal Zone Management objectives may be incompatible with intensive management for timber operations. Of course, my analysis is preliminary but I see little merit in the Sierra Club concept.

It is my opinion that the concept presented is an effort out of desperation on the part of the Sierra Club, presented with the full knowledge that opposition by the Alaska timber industry would be forthcoming should Shee Atika consider the concept. In addition, I feel that the concept as presented will be used to beg more time from the Committee and will then be used in an attempt to argue for delay in court decision on the grounds that a "settlement" is pending.

Regarding the Sierra Club comparison of timber volumes, they take great pride in pointing out that the Cholmondeley area is reported to contain 670,092 MBF where Admiralty Forest Service data reflects 468,334 MBF. Representatives of Kanalku reflect that actual cruise data of their properties are roughly 25% higher than original U.S.F.S. representations, and Shee Atika finds that their inventory is 60% higher than the U.S.F.S. data represents. This infers that the U.S.F.S. data, although a fundamental basis for comparison, is not reliable in regard to consistency.

Through reported increased timber volumes the Sierra Club infers increased value as compared to our Admiralty selection. I must remind the Committee that this concept of inference is not valid. Timber grades, volumes, species composition, operating costs and operating constraints all work together to reflect value. If one assumes all other factors equal, evaluating value based merely on percent pulp grade (normally found to be 35% on Prince of Wales Island and 15% on our Admiralty ownership) the resultant value comparison results in a value representing Admiralty timber as 28% greater than a like volume on Prince of Wales Island.

I urge the Committee to deal with the Sierra Club Concept with expedience and resolve.

Sincerely,

Roger D. Snippen

Roger D. Snippen
President & C.E.O.

RDS/wrw

SHEE ATIKA, INCORPORATED

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November 16, 1983

Honorable Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
Senate Hart Bldg. 83H
Washington, D.C. 20510

ATTN: Jerry Reichlan

Dear Senator Andrews:

Attached is Shee Atika's first analysis of the Sealaska document on Admiralty Island Alternatives as submitted to the Senate Committee on November 3, 1983. I would like our analysis entered in the record regarding these proceedings.

Sincerely,

Roger D. Snippen
President & C.E.O.

RDS/wrw

SHEE ATIKA, INCORPORATED

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November 15, 1983

Mr. Richard A. Baenen
Baenen, Timme, DeReitzes & Middleton
1049 30th Street N.W.
Washington, D.C. 20007

Dear Richard:

This memo is Shee Atika's initial analysis and response to the Sealaska document A Study of Potential Settlement Options Related to the Dispute Over Shee Atika's Ownership and Development of the Cube Cove Lands on Admiralty Island, Southeast Alaska, October 28, 1983 as presented to the Senate Select Committee on Indian Affairs, November 3, 1983.

Although this document represents a substantial effort upon the staff of Sealaska and will require additional time to fully analyze, there are several sections of the report which can be evaluated on merit with relative ease. In addition, there are several basic consideration which have not been addressed in the report but which have a high correlation to establishing basic credibility for the report.

Sealaska states on page 7 "...any serious consideration of settlement options would require a commitment by the Federal Government, and others, to maintain and cover Shee Atika's cash flow requirements during the settlement negotiations. Additional financial support would be required to cover Shee Atika's expenses associated with the evaluation of the settlement options and negotiation of the final settlement package." In identifying exchange options, Sealaska notes on page 29. "These evaluations do not attempt to identify any minimum criteria that Shee Atika or any other party would require. Further, the identification and evaluation of these areas did not consider political, social contractural or other factors which may result in the area(s) being unacceptable exchange options." [emphasis added]

Other specific areas not considered is Shee Atika's need for immediate cash, the longevity to date that Shee Atika shareholders have existed without tangible benefits from the settlement act, and an expected time frame for any alternative settlement for the Natives of Sitka.

If one would disregard any potential adverse political climate and debate regarding a given area(s) which may be an acceptable exchange site to Shee Atika, the intensive timber cruise, appraisal of development and logging costs, and the resultant net timber value would take a minimum of one year to complete. It should be intentively obvious to everyone that an acre for acre exchange would be completely unacceptable to Shee Atika as would a dollar for dollar exchange of assets as Shee Atika has invested significant resources defending its interest in the Admiralty Island properties. The delay of operations brought about by Angoon and the Sierra Club have forced an accrual of extensive interest charges and have extensively damaged our Good Will in the business community.

Many of the exchange alternatives are self eliminating as poor options by the author of the report and are included in the report merely because they are alternatives. As hinted by the testimony submitted by the Alaska Loggers Association, any proposed exchange into LUD III and IV lands would be bitterly fought by other timber interests in Alaska. A proposed exchange into these areas would merely shift our opposition from the Sierra Club to the timber industry.

Alternative selections involving LUD I and LUD II lands would require the environmental community and Congress to arrive at an understanding and agreement with Shee Atika. A major hurdle I see here is getting the environmental community to unanimously agree to a proposal and, after that, getting Congress to agree to fund appropriate monies to complete a settlement. In addition, Shee Atika would require a stipulation from all appropriate state and federal agencies as well as the environmental community and fisheries interests that we could proceed with development activities unimpeded. Without this stipulation, Shee Atika has no reason to believe that it would not be stepping from an area of perceived controversy to an area with real environmental concerns.

In addition to the above, Sealaska would have to agree to any exchange to insure protection of their subsurface rights. Also, additional legislation would be required to protect the tax status of both Shee Atika and Sealaska.

Given the above and the political climate in Washington and Alaska, it is highly unlikely that an exchange involving federal lands could culminate successfully. It is the feeling of Shee Atika, and supported by testimony of Max Peterson, Chief of the U.S. Forest Service, that an exchange of Shee Atika lands for federal lands of the Tongass National Forest would merely reopen the heated debate of the recent D-2 legislation. With this concept in mind, few options remain and but a couple of these are realistic in scope. Sealaska states on page 79 of this report. "Cube Cove resolution options suggesting exchange of Cube Cove properties for other lands in the TNF encounter reoccurring constraints. The exchange options are limited because LUD I and LUD II lands have high nontimber values where protection may be incompatible with timber harvest, while LUD III and IV lands are already committed to meet the 4.5 billion board feet decade harvest." Also, given the fact that Congress is faced with the responsibility of controlling the escalating federal deficit, it is highly unlikely that a federal "buy out" of Shee Atika's interests would ensure.

The option of Shee Atika developing its lands for full resource potential was not included in the Sealaska report, apparently because the author felt that opposing interests would not look favorably upon this option, or perhaps because this is the assumed current status. However, excluding this option while including the multitude of exchange alternatives appears to establish an assumption that Shee Atika will not strive to realize the full intent of ANCSA and ANILCA. Please be assured that this is not the case. As the business leader of the Corporation it is my responsibility to insure that our corporate interests are protected. For the Natives of Sitka this does not mean accepting any "settlement" which compromises their full rights unless full restitution is obtained.

A comprise infers that both parties settle for less than their legal rights as they perceive them. In our case, should a "compromise" occur, it is obvious that Shee Atika would have to "give up" some of its rights as prescribed by ANCSA or ANILCA. The question that remains is what would our opposition give up? As they have no legal right in the land, it is my opinion that they have nothing to give but a concession regarding the ongoing litigative harassment. As the rights and interests of Shee Atika are specified in the law, it is apparent that we will eventually prevail where litigation is concerned. It is extremely disturbing that the route of constant litigation is the tactic used by our opposition but I do not feel that it is in the best interests of our shareholders to concede rights as prescribed under the settlement act merely to appease threats of litigation.

Of the alternatives presented there are only six which could be considered to have some merit. These are as follows:

OPTION CODE:

I-A	Timber Harvest Mitigation
I-B	Recreation and Tourism Development
I-C	Exchange after First Rotation
II-E	Exchange for Sealaska Corporation Lands
II-F	Transfer of Kootznoowoo Cholmondeley Sound Properties to Shee Atika
III-A	Purchase Cutting Rights and Exchange for TNF Cutover Lands

Even though I feel that the options as listed above have some merit, the logic that a solution to the situation encompassing the concepts as listed in the Sealaska document does not necessarily follow. It is possible that a combination of various traits of alternatives I-A, I-B, I-C and III-A would comprise a separate alternative not listed, but would more closely blend into an overall solution. However, it should be noted that with each of the above options additional compensation to Shee Atika is also needed.

From the outset Shee Atika has been willing to discuss mitigation with representatives of Angoon and the Sierra Club. This fact is documented by the attached letters of October 4, 1982 to Mr. Ivan Gamble, and December 20, 1982 to Mr. Jack Hession. To date however, these groups have refused to acknowledge our offers and have taken a position that the only acceptable solution is an off Admiralty land exchange. Although Shee Atika will discuss mitigation, this concept should not be misconstrued to represent a position that Shee Atika will yield card blanch to mitigation "requirements" of our opposition. It must be remembered that Shee Atika is a profit corporation and although the Natives of Sitka intend to fully accept a roll of being good trustees of their land, there are also underlying factors present which require us to compete in the business world. Shee Atika views the Mitigation measures as stated in Sealaska option code I-A as being generally extreme and incompatible with corporate objectives. Good timber management incorporates the concepts as presented to various degrees but to specify special Management Units is the responsibility of the land owner.

Option II-E, an exchange for Sealaska Corporation lands, although having merit considering the possibility of such an exchange, does not have merit considering the feasibility of the exchange. Sealaska itself states on page 76 that a "Shee Atika selection from Sealaska over-selections is not a viable option."

Option II-F regarding the Cholmondeley Sound properties has merit only in the fact that there are definitive properties addressed in the proposal which are private lands. The feasibility of this option is not too probable considering the fact that Shee Atika is under a time constraint and the proposal also calls for a compensation package which requires extensive time to develop and implement.

It is rather discouraging to review the Alaska Native Claims Settlement Act and then reflect upon recent events involving Shee Atika. According to ANCSA, Section 2, Congress finds and declares that - "(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims; (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation." By Section 4, a declaration of settlement in that - "(a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any." [emphasis added]. Further, by Section 506(c) of ANILCA "In satisfaction of the rights of the Natives of Sitka, as provided in Section 14(h) (3) of the Alaska Native Claims Settlement Act, the Secretary of the Interior . . . shall convey . . . . the surface estate in the following described lands on Admiralty Island to Shee Atika, Incorporated." The legal discreption of Section 506(v) of ANILCA specifies the lands to be conveyed to Shee Atika by Section, Township and Range.

It seems ironic that while the Natives of Sitka accepted this settlement as resolution of their birthright, other interests would seek to invalidate this right. Shee Atika is satisfied with the ownership of its land conveyed under the settlement act and is willing to work with special interest groups to help mitigate their concerns. However, Shee Atika management cannot and will not sit idly by while these interests attempt to rob the Sitka Natives of their birthrights.

Through the provisions of ANCSA and ANILCA Congress issued a settlement pertaining to aboriginal rights of the Natives of Alaska. By Section 506(c) of ANILCA Congress specifically delineated the settlement for the Natives of Sitka. After challenge by the Sierra Club to titles authorized under ANILCA, Congress reaffirmed the rights of Shee Atika by Section 315 of PL 97-394. Still, the battle rages on as Shee Atika attempts to act according to those rights. Sealaska, in an effort to help resolve the "dispute" regarding Shee Atikas' Admiralty Island properties has posed several alternatives or settlement options in their document of October 28, 1983 as submitted to the Senate Select Committee on Indian Affairs, November 2nd and 3rd, 1983. Although the document is broad in scope, it is extremely shallow in depth. It poses 49 options for settlement but completely disregards the political, social and economic climate within which we operate. As Senators Murkowski and Stevens, and Representative Young have testified, a settlement of the issue at hand which would require a legislatively induced exchange is not feasible. Opposition to proposed alternatives involving a Shee Atika exchange into Tongass National Forest Land Use Disignations (LUD) I, II, III, or IV preclude any exchange involving lands of the Tongass. Of the six alternatives considered to have merit as to possibility, all fall short when considering feasibility. Most all alternatives involve a compensation package and none address a time frame for implementation.

Shee Atika is destitute because of Sierra Club actions despite our efforts to meet regarding mitigation. As we struggle to maintain solvency our resolve grows stronger and our attitudes grow harder. "Settlement options" posed to date have virtually been void of substance and address a single minded approach with the message - get off Admiralty Island. While the Sealaska document is the first "analysis of alternatives" posed, it is far from satisfactory in that it fails to address specifics and completely disregards the "real world" involving a hoast of political and socioeconomic realities. While we commend the efforts of Sealaska regarding the Admiralty Island issue, the basic questions remain unanswered. These questions are how will Shee Atika meet its short term capital requirements; how much is involved in an alternative land and compensation package; and how long will it take to implement.

During the past ten years Shee Atika extensively studied the Tongass in regard to land selections. We have demonstrated our willingness to cooperate with special interest groups by giving up four previous selections sites in an effort to appease their "concerns". Repeatedly we have offered to mitigate their concerns by modifying operation plans within the confines of economic reality. Now, we find ourselves in a position of economic peril. The time for action is at hand.

More indepth comment regarding the Sealaska document is attached as an addendum to this memo in the form of a letter from Don Soukup regarding the Sealaska document.

Although this response is basically a quick overview of the Sealaska document one can easily discount many of the proposed alternatives given political and socioeconomic constraints. A more thorough analysis of the Sealaska document is felt to be unwarranted at this time given the "shot gun" approach used in the development of their alternatives. Should a concrete specific proposal be offered for our consideration we will be happy to review the proposal in depth, considering all of the factors and technical input necessary to make a prudent business decision regarding any such proposal.

Should you desire additional information regarding the Sealaska document please give me a call.

Sincerely,

Roger D. Shippen

Roger D. Shippen
President & C.E.O.

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MEMO

TO: Roger Snippen
President & C.E.O.

FROM: Donald Soukup

DATE: November 15, 1983

RE: Comments on Sealaska's Potential Settlement Options.

The introduction and the description of Shee Atika's property are pretty straight forward. I felt Sealaska did not emphasize Shee Atika's goals on managing Cube Cove for timber production. The issue of subsistence was addressed but not in a positive way. The D.E.C. hearings have pointed this out.

Sealaska addresses only lightly the mineral potential that they own in the subsurface rights. Sealaska could have addressed this issue more positively. The potential of rich mineral deposits on alternative selection is not as great as the two known claims on Admiralty that are adjacent to Shee Atika's properties.

The section on compensation considerations is very shallow and does not go into much depth. This section does not consider how Shee Atika will survive during the interim time while negotiations are continuing on the compensation alternatives. This section does mention that Shee Atika has invested large sums of money in litigation and development.

The section on mitigation options on managing lands under strict U.S.F.S. management objectives specifying emphasis on recreation, fisheries, and wildlife management units has much to be desired. Although having alot of "sex appeal" to our opposition, such strict management practices are not necessarily in the best interest of Shee Atika shareholders.

The section on exchange after first rotation harvest is not viable alternative for Shee Atika. High development costs of the breakwater, log transfer, sort yard and camp could not be amortized over all of the volume that would be removed. Shee Atika would be forced to other areas and would in all probability constitute a "shot gun" ownership after the first rotation and Shee Atika could not manage its own land for future timber harvests. Shee Atika would incur additional development costs in the future years for second rotations on its exchange lands.

I see problems in selecting the exchange areas with the current long term and independent sale programs planned for the future. Sealaska feels that this alternative would reduce the U.S.F.S. problem of meeting the 4.5 BBF harvest mandated by ANILCA. On the surface this might be true, but in reality I do not believe this would happen.

The timberland exchange options could cause some real problems for the U.S.F.S. in managing the Tongass National Forest for the ten year annual harvest of 4.5 BBF. It would also not allow Shee Atika to recover current investments in Cube Cove without some kind of capital infusion to the Corporation. Also, Shee Atika has no protection that they will not be challenged in the future by the Sierra Club or federal and state agencies as they begin to develop alternative lands. Many of the present LUD I and LUD II designations were proposed by other environmental groups and not the Sierra Club. The LUD I areas have been designated as wilderness and would take an act of Congress to open these lands to exchange. This type of exchange would reinitiate the heated debate of the previous D-2 land issue. I will attempt to give some background on the formation of the different LUD I and LUD II designations.

Tebenkof West Kuiu. Originally this area was part of Alaska Lumber and Pulp (A.L.P.) long term timber sale. The Southeast Alaska Conservation Council (SEACC), a group of environmentalists in Southeast proposed 47 areas in the Tongass National Forest for wilderness. All of the proposed areas were picked to block proposed access for future timber harvesting. Many of the areas were inside the two long term timber sales areas. SEACC formed chapters in different cities to gain support for specific selection areas. The Petersburg SEACC group picked Tebenkof West Kuiu as a prime area for wilderness consideration. The town of Port Alexander joined SEACC in supporting the Tebenkof area. The reasons given for chosing this area were, high scenic value, high wildlife value, and high fisheries value. SEACC was also supported by the State Department of Fish and Game in this proposal. Port Alexander claimed that people from their town used this area for recreation. The whole intent was to stop A.L.P. from logging southern end of Kuiu Island, I am sure that the Sierra Club may indicate nonobjection but we would undoubtly be placed at odds with Petersburg SEACC, Port Alexander and A.D.F.& G.

North Admiralty. This area takes in the Noranda Mining area plus adjoins Cube Cove. This area was proposed as wilderness by SEACC and the Sierra Club. I find it hard to believe that if the Sierra Club wanted Shee Atika off Admiralty that they would even consider this area as an exchange. The timber value is not as high as that of our current selection and presents a possible conflict with Noranda interests.

Burroughs Bay Unuk River. This area is inside the misty Fiords National Monument area. The Ketchikan SEACC group proposed this area for wilderness after Borax claimed their interest in the area. The Sierra Club joined SEACC in supporting this area for wilderness designation.

Politically the Sierra Club could not agree to this exchange since they were the ones who fought U.S. Borax so hard in developing their claims. They would have too much to lose in this area. This area is also not very accessible.

Duncan Canal, Kupreanof. The Petersburg SEACC group was behind this area being designated as wilderness. The U.S.F.S. and the Alaska Department of Transportation were proposing a state highway between Kake and Petersburg. The Petersburg SEACC group organized the citizens of Petersburg and local fisherman into objecting to the road because it would ruin the life style of Petersburg by connecting two communities. SEACC also used the wetlands in this area to gain support for wilderness designation. SEACC claimed this area was Petersburg's only recreation area with unique scenic qualities. Shee Atika probably would not have to battle the Sierra Club regarding this exchange but would undoubtedly have a long legal battle with the Petersburg citizens and SEACC in regard to development of this area.

Wilson Arm. This area lies inside the Misty Fiords National Monument. This area would not be a viable exchange for the same reasons that were stated in the Burroughs Bay Unuk River area.

Chichagof Yakobi. This area was originally part of A.L.P.'s long term contract area. The Sitka SEACC group fought for this area to be designated wilderness prior to the D-2 issue. The president of the Sitka SEACC group, Jack Calvin, was instrumental in having the U.S.F.S. move A.L.P. out of this area and substitute the Kuiu Island area for their long term sale areas. This area was one of the original areas Shee Atika proposed as a selection area. The Sierra Club could agree to an exchange in this area, but the Sitka SEACC group would violently oppose. The timber quality is of lower grade than what Shee Atika has at Cube Cove.

Russell Fiord Yakutat. This wilderness area was proposed by SEACC back in 1976 when the state was planning a highway to connect Yakutat to the Alcan Highway. SEACC was instrumental in getting the Natives of Yakutat to also oppose the highway and future U.S.F.S. timber sales in the area. A.L.P. closed down its timber operation in 1977 at Yakutat because the U.S.F.S. would not offer anymore timber sales in the area. This area became wilderness during the D-2 ligislation.

Karta River. This area was originally in the Louisiana Pacific, Ketchikan (L.P.K.) long term contract. It was pulled from the L.P.K. sale at the request of the Ketchikan SEACC group and the State Department of Fish and Game. The environmentalists and A.D.F. & G. claimed it was a high recreation area and had a sensitive fisheries area. Because of past logging in the area it could not be classified as wilderness, but through SEACC it was designated as LUD I which restricts logging. SEACC would object strongly to any exchange.

Etolin Island. This island was one of SEACC original 47 wilderness selection areas. The island was part of A.L.P.'s long term Pacific Northern timber sale. The local SEACC groups from Wrangell and Petersburg fought very hard to have this area designated as wilderness. Because of past and current logging it did not qualify. SEACC was instrumental in gaining support from A.D.F. & G. to specify this area as high value fisheries habitat. SEACC claimed it was an important recreation area for the citizens of Wrangell and Petersburg. Through SEACC's insistence the area was classified as a LUD I.

Exchanging Cube Cove lands for LUD II lands would have an impact on the U.S.F.S. meeting its 4.5 BBF/decade in the future. All LUD II areas in the Tongass National Forest were part of SEACC's 47 wilderness proposals but did not meet the qualifications of wilderness.

As a compromise the U.S.F.S. reserved these areas as LUD II which restricts logging. The LUD II areas that Sealaska is proposing would not allow Shee Atika to have land in a single contiguous unit. Therefore, Shee Atika would end up in a multiple ownership pattern. Some of the LUD II lands proposed are adjacent to wilderness and other Native corporations. This could put Shee Atika into a posture of having land that is landlocked and not allowing free access for the transportation of logs. The following is short comments on each of Sealaska's LUD II proposals for exchange.

Naha River. This area was claimed by the Ketchikan SEACC group to have high recreation value. Its many lakes provide scenic settings for recreationists. The LUD II classification, restricting logging, was a trade off that the U.S.F.S. made with SEACC.

Yes Bay. This area has the same considerations, as the Naha River area.

Endicott Arm. This area was reviewed by Shee Atika as a possible selection area prior to choosing Cube Cove. It is located on the mainland adjacent to Goldbelts holdings and was rejected because of the environmental sensitivity of the area and poor timber quality. SEACC had proposed this area for wilderness. Shee Atika again reviewed the area in 1983 at the request of Goldbelt and was again rejected as a viable alternative.

Tenakee Inlet Chichagof. This area was once part of A.L.P.'s long term contract. It was one of SEACC's 47 wilderness proposals. SEACC intended to block road access for future logging by A.L.P. and organized the town of Tenakee in opposing logging in Tenakee Inlet. The U.S.F.S. classified this area a LUD II to restrict logging and preserve three valleys in the Inlet. The timber volume is light and the area would be very expensive to log.

Idaho Inlet North Chichagof. This was part of A.L.P.'s long term contract. SEACC had proposed this as one of their 47 wilderness areas. SEACC and the community of Elfin Cove claimed this area as a prime spawning area for salmon. The A.D.F.& G. agreed with SEACC and the U.S.F.S. classified the area as a LUD II to restrict logging. The U.S.F.S. reported timber volume of the area is too high. A.L.P. has estimated a total of 30 MMBF of commerical timber in the area.

Rocky Pass Kupreanof - Kuiu. This area was part of A.L.P.'s long term contract, but was withdrawn. SEACC had proposed this area as wilderness to block a road that would tie Kuiu Island and Kupreanof Islands together. The Petersburg SEACC group organized the Kake Natives and citizens of Petersburg in supporting this area as a prime recreation site. A.D.F. & G. said it had high wildlife and fisheries value. The U.S.F.S. used this as a trade off for the inclusion of Kadake drainage on the A.L.P. allotment.

Bradfield Canal - Harding River. This area was originally part of A.L.P.'s Pacific Northern contract but was withdrawn. The Wrangell and Petersburg SEACC groups had proposed this as wilderness because of its scenic qualities and high recreational values. This is mainland timber and of poor quality. The estimate of commerical volume is undoubtedly overstated by some 30 MMBF. Road construction is extremely difficult.

Farragut Bay. This is mainland timber and very poor quality. SEACC again had proposed this area for wilderness withdrawal. The area had been proposed by the U.S.F.S for future independent timber sales. The LUD II designation was a trade off between SEACC and the U.S.F.S.

Peril Strait. This area was classified as LUD II at the insistence of SEACC. SEACC had proposed this area as high recreation. This area was also proposed as one of SEACC's wilderness areas. SEACC had the support of A.D.F. & G. because of the fisheries and wildlife habitat. Lake Eva which is part of this VCV is heavily used by recreationists. This lake has the first handicap cabin in the Tongass National Forest. A book was written about the area called "Brown Bear Red Salmon". This book was promoted by SEACC and gained a lot of support for SEACC. If Shee Atika were to consider this as an alternative selection the same fight they are presently having in Cube Cove will start all over again. The timber volume estimated for the area is overstated.

Lemesurier Island - Icy Strait. This timber has little commerical value. The timber volume as reported is overstated. A.L.P. estimated only 6 MMBF commerical timber on the island. This area would be very expensive to log and has no shelter for a long transfer site.

Shelter Island - Lynn Canal. [illegible] island is close to Juneau and SEACC proposed it as an area of high recreation qualities. The feasibility of using this area for timber production was very low.

Berners Bay - Lynn Canal. This area is close to Juneau and is used for recreation by the citizens of Juneau. This area was proposed as the site for the U.S. Champion International Pulp Mill. At the time the site was proposed, the Sierra Club and SEACC opposed any development in the bay. This area was also included in U.S. Champions long term sale.

The exchange of LUD III and LUD IV lands would be a disaster to the timber industry in Southeast Alaska. The U.S. Forest Service has expressed some concern along with the timber industry that there is not enough LUD III and IV lands to fulfill the two long term contracts under current management guidelines. ANILCA mandated the U.S. Forest Service to provide 4.5 BBF of timber per decade for harvest. Any reductions in the LUD III & IV classifications would be met with stiff opposition by the forest products industry. Many of the areas that have been proposed as alternatives by Sealaska are currently under contract to the two pulp mills. These are not viable alternatives. The remaining areas are available for U.S. Forest Service independent timber sale program. Reduction in this land would seriously hurt the 4 small business sawmills of Southeast Alaska. A review of the LUD III and IV proposed exchange areas follows.

West Cholmondeley. This area is part of Louisana Pacific long term timber sales. The area has some past logging that L.P.K. has done. VCU 676 has many streams and lakes. Selection in this area would cause some serious problems in allowing the uses to fulfill its contract commitment to L.P.K.

Polk Inlet. This area is the L.P.K. long term contract. Same reasons apply as West Cholmondeley area. There could be some access problems with other Native corporations. A joint road use agreement would have to be worked out. This area does not have the quality of timber that Shee Atika has in Cube Cove.

Lancaster Cove. This area is adjacent to Kootznoowoo's selection. Again there could be access problems and joint use of other facilities may present other conflicts. The proposed area is also in L.P.K.'s long term contract. The timber is more defective than what Shee Atika presently has. This would not be a viable consideration.

Steelhead Creek Control Lake. This area is similar to the previous area discussed. A conflict could arise with Sealaska owning the adjacent lands. There has been some major conflicts with other Native corporations and Sealaska when landholdings were intermingled. This alternative should not be considered.

Heceta Island. This island has had a history of past logging. The timber is of high quality, but is more defective than Cube Cove. This area is part of L.P.K. contingency area for their long term contract. L.P.K. has indicated to the U.S.F.S. that they will have to exercise their option to enter this area. At the present time, this area is part of the U.S.F.S. independent timber sale program. This area is not a viable timber sale program. This area is not a viable alternative because of timber industry interests.

Freshwater Bay. This alternative is part of A.L.P.'s long term timber contract. A.L.P. is currently operating in this area. At the time, A.L.P. was trying to become established in Freshwater Bay much opposition was met in obtaining the necessary permits. The National Marine Fisheries, Fish and Wildlife Service, and the Alaska Department of Fish and Game all objected to the establishment of a logging camp and log transfer facility in Freshwater Bay. In 1981 A.L.P. had to consider putting another camp and dump in Freshwater Bay and was met with very strong opposition from both state and federal agencies. A.L.P. was forced to seek another area for their facilities. At the present time, A.L.P. has logged 20 percent of the available timber and is currently planning on operating for at least another six years in the area. Selecting this area would cause a real hardship on A.L.P. and their long term contract. The quality of timber is not as great as what Shee Atika currently has. Sealaska claims that Freshwater Bay could be linked to False Bay and Gypsum Creek. A.L.P. had proposed doing this to the U.S.F.S. on two occasions but was turned down by the U.S.F.S. because of environmental concerns. This alternative in not practical.

False Bay Gypsum Creek. This alternative is part of A.L.P.'s long term contract. The U.S.F.S. has proposed having an indepedent timber sale in Gypsum Creek and has met opposition with A.L.P. and different state and federal agencies. The U.S.F.S. has made three attempts to obtain an Army Corps of Engineers permit, but to date has not received the permit. The timber is of poorer quality than what Shee Atika currently has. This alternative is not viable.

Kadashan River Tenakee Inlet. This alternative is part of A.L.P.'s long term contract. A.L.P. had proposed operations in this area in 1974, but was turned down because the state and U.S.F.S. were using the drainage as a research area. A.L.P. proposed this area again for operations and met with objections from the city of Angoon and Tenakee Springs. This area would be as controversial as Shee Atika's present ownership in Cube Cove. This alternative should not be considered.

Carroll Inlet. This proposal has average quality timber. The topography would make logging and road building costs higher than Cube Cove. The wood quality would not bring as high a marketing price as Cube Cove. Transportation of Shee Atika personnel would be more costly. This alternative is not viable.

Cleveland Peninsula. This alternative is similar to Steelhead Creek, Control Lake. Sealaska has already selected the prime timbered areas in this un. Shee Atika would not have as high quality wood as it currently has.

Nossuk. This area is part of L.P.K.'s long term contract. This alternative would have similar problems which have already been addressed.

Kosciusko Island. This island has had extensive logging. L.P.K.'s long term timber sale has this area reserved as a contingency area. The truck haul to the existing log transfer site would be extensive. There are some private and state ownership problems associated with the two log transfer sites on the island. The community at Fisherman's Harbor is opposed to any logging in the area. To avoid any further conflicts Shee Atika should not consider this as an alternative.

Nutkwa Vcu. This proposed alternative could cause a conflict with the Hydaburg Corporation selection. Access and right of way problems could be a big factor in rejecting this alternative.

Mud Bay (Icy Straits) Loon Lakes. This alternative is within A.L.P.'s long term contract. SEACC filed court action against A.L.P. to stop logging in this area. A.L.P. was delayed for a year and a half in its attempts to gain access to the drainage. A.L.P. is currently logging in the area. Sealaska's suggestion of tying this into the Idaho Inlet is not a viable consideration. The Sitka SEACC group was very vocal in not allowing A.L.P. to make this a reality. This area was one of SEACC's 47 proposals for wilderness during the D-2 legislation. Shee Atika would start its Cube Cove litigation all over again if this unit were selected as an alternative.

Endicott, Sand Bay, Windham, Chuck River. This area was considered by Shee Atika prior to making their selection at Cube Cove. This area has many environmental problems. There are numerous fish streams and eagle trees in the area. Shee Atika met with Goldbelt to discuss joint use of their facilities. The conclusion was reached that Goldbelts existing facilities would not handle Shee Atika's and Goldbelt's logging production. The problem of use fees would have to be considered. Goldbelt is experiencing road construction problems in the area. The rock sources are very poor. The timber quality is very low with a high percentage of pulp logs. The U.S.F.S. was proposing a timber sale in the Chuck River drainage and met with opposition from the preservationist groups. Mainland timber is more defective and Goldbelt is experiencing a problem with black heart in its hemlock logs. The buyers are reducing the price by 15 percent for black heart hemlock. This is not a viable option.

Dall Island. This alternative should not be considered. It will cost more to log this area because conventional logging methods could not be used. There is a potential right of way problem across Sealaska that would have to be considered. Sealaska says that this area is a poor alternative.

Moira Sound. This is part of L.P.K.'s long term timber contract. This alternative is similar to others that are in the L.P.K. long term contract.

Suemez Island. This area has many road construction problems. The U.S.F.S. in a recent independent timber sale had trouble making the sale appraise with a positive stumpage. As stated by Sealaska this would be a poor alternative for Shee Atika.

Noyes Island. This area has poor quality timber and does not have a good site for a log transfer facility. The island is exposed to the Gulf of Alaska rendering log rafting a condition of the weather. Sealaska agrees that this area is a poor alternative.

Thorne Arm. This area does not have high quality timber. Cape Fox Corporation selected the highest quality timber in this area. It appears that there may be some problems in logging the proposed 139 MMBF of timber in this area due to access problems.

Peril Strait (Head In). This alternative is within A.L.P. long term contract area. The area has road building and access problems due to the wilderness boundaries. The timber is poor quality and the volume per mile recovery is 1.0 MMBF. This low volume just increases operating costs. Sealaska admits this is a poor area.

Fourteen of the twenty LUD III & LUD IV areas that Sealaska proposed as possible alternatives lie inside the two long term timber sale contracts. If Shee Atika were to consider any or combination selections one of the long term contracts would be breached. Both pulp companies have a real concern that there is not enough timber in there contract areas to fulfill the contracts and the U.S.F.S. has a similar concern in meeting its obligation mandated by ANILCA. Any further reduction in the commerical forest land base would jeopardize the U.S.F.S. in meeting its obligations under ANILCA.

Exchange For Sealaska Corporation Lands. This option is not viable to Sealaska. Sealaska states that if this was considered Sealaska would have to receive a monetary compensation and it would take time to develop. None of the options consider funding for Shee Atika while alternatives are being considered. If Sealaska is asking for monetary compensation for their lands perhaps Shee Atika should consider the monetary compensation for their Cube Cove lands at the outset thus simplifying the system.

Transfer of Kootznoowoo Cholmondeley Sound Properties to Shee Atika. Sealaska is proposing that Kootznoowoo would receive monetary compensation and other options to expand their portfolio. If Sealaska is considering this as an alternative perhaps Shee Atika should consider expanding its portfolio into other areas other than timber management. This would eliminate several steps and not displace two Native corporations. Shee Atika's present ownership is far superior to Kootznoowoo's Cholmondeley property.

Exchange Cube Cove Properties for State Land. This option is not practical or feasible. The state has made many of their land selections next to communities and in smaller tracts. This would lend to a "shot gun" approach to management. The state made its selection with other values in mind other than timber management. The state forests of Haines, Yakataga, and Fairbanks have had many conflicts dealing with environmental and wildlife concerns. If Shee Atika would face these same environmental and wildlife concerns.

Purchase Cutting Rights and Exchange for T.N.F. Cut-over Lands. This option in theory has some merit. However, to implement an option as this, would require a very indepth study. In my first overview, I estimate approximately 2 years at a minimum to evaluate the detail. Problem areas could require longer and this option in reality could be a legal nightmare for Congress, U.S.F.S., Sealaska and Shee Atika. This still does not exempt Shee Atika from being attacked by preservation groups in the future on operating areas. This type proposal would be very difficult to administer and does not consider the immediate survival needs of Shee Atika while the studies are being made.